

1 CHEVRON CHEMICAL COMPANY,
2 CHEVRON PIPE LINE CO.,
3 CHEVRON USA, INC.,
4 ATLANTIC RICHFIELD COMPANY,
5 including ANACONDA AMERICAN
6 BRASS DIVISION,
7 AMERICAN NATIONAL CAN,
8 TELACO INC., including RICHFIELD
9 EAST DOME UNIT and SIGNAL MILL
10 WEST UNIT and Subsidiaries,
11 EXXON CORPORATION,
12 McDONNELL DOUGLAS CORPORATION,
13 UMOCAL CORPORATION,
14 MI INDUSTRIES, INC. for MORRIS, INC.,
15 SUN EXPLORATION & PRODUCTION COMPANY,
16 OCCIDENTAL PETROLEUM CORPORATION,
17 MOBIL OIL CORPORATION including
18 SUPERIOR OIL COMPANY,
19 SOUTHERN CALIFORNIA GAS COMPANY,
20 KIEWIT CONTINENTAL, INC. for
21 CONTINENTAL CAN,
22 SHELL OIL COMPANY,
23 SANTA FE ENERGY COMPANY/CHANSIOR
24 WESTERN OIL DEVELOPMENT,
25 MARTIN MARIETTA CORPORATION for
26 MARTIN MARIETTA CARBON INC., and
27 COMMONWEALTH ALUMINUM CORPORATION
28 (formerly known as MARTIN
MARIETTA ALUMINUM, INC.),
UNION PACIFIC RESOURCES COMPANY
for CHAMPLIN PETROLEUM CO.,
SOULE'-ARMON LIQUIDATING AGENCY,
COMOCO, INC.,
DOUGLAS OIL COMPANY OF CALIFORNIA,
GENERAL MOTORS CORPORATION,
LONG BEACH OIL DEVELOPMENT COMPANY,
LOCKHEED AERONAUTICAL SYSTEMS
COMPANY a division of LOCKHEED
CORPORATION,
INTERPACE CORPORATION,
ALUMINUM COMPANY OF AMERICA,
SOUTHERN CALIFORNIA RAPID TRANSIT
DISTRICT,
STRON CONTAINER COMPANY for JOSEPH
SCHLITS BREWING COMPANY
ALLIED-SIGNAL, INC. for GARRETT
AIRESEARCH,
AMERICAN AIRLINES, INC.,
BETH LABORATORIES, INC.,
BETHLEHEM STEEL CORPORATION,
INGILCO CORPORATION for SINCLAIR
PAINT COMPANY,
DEPARTMENT OF WATER AND POWER of
the CITY of LOS ANGELES,
///

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NOTE: PARTIAL COPY
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AND RODS NOT INCLUDED

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46
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48 FOR THE CENTRAL DISTRICT OF CALIFORNIA
49
50 UNITED STATES OF AMERICA, THE STATE
51 OF CALIFORNIA, and THE CALIFORNIA
52 HAZARDOUS SUBSTANCE ACCOUNT
53
54 v. Plaintiff,
55
56 No. CV 88 7196 MRP(Kx)
57
58 PARTIAL CONSENT DECREE
59
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1 QUANTUM CHEMICAL CORPORATION,)
ENERGY DIVISION,)
2 SOUTHERN CALIFORNIA EDISON COMPANY,)
REYNOLDS METALS COMPANY,)
3 CALGON CORPORATION/CALGON VESTAL)
LABORATORIES,)
4 UNITED STATES BRASS CORPORATION)
for EASTMAN CENTRAL,)
5 LONG BEACH UNIT, WILMINGTON OIL)
FIELD, CALIFORNIA (CITY OF LONG)
6 BEACH, UNIT OPERATOR: THUMS LONG)
BEACH COMPANY, AGENT FOR FIELD)
7 CONTRACTOR),)
MITCHELL ENERGY CORPORATION,)
8 BORG-WARNER CORPORATION for BYRON)
JACKSON PUMP DIVISION,)
9 INGERSOLL-RAND COMPANY for PROTO)
TOOL,)
10 SOUTHWEST PROCESSORS, INC. for)
SOUTHWEST PROCESSORS, INC. and)
11 AMEROLL,)
LIBERTY VEGETABLE OIL COMPANY,)
12 EDGINGTON OIL COMPANY,)
REICHOLD CHEMICALS, INC.,)
13 CROWLEY MARITIME CORPORATION for)
CROWLEY TOWING & TRANSPORTATION)
14 CO. and CROWLEY ENVIRONMENTAL)
SERVICES CORPORATION,)
15 MENASCO, INC.,)
USG CORPORATION for HOLLYTEX CARPET)
16 MILLS,)
XEROX CORPORATION,)
17 MAJOR PAINT COMPANY,)
SOUTHERN PACIFIC TRANSPORTATION)
18 COMPANY,)
TRW INC.,)
19 COOPER DRUM COMPANY for SUPERIOR)
DRUM,)
20 ANCHORLOK CORP. for ANCHORLOK LEAR)
SIEGLER CORP. and ROYAL)
21 INDUSTRIES, INC.,)
SUPERIOR INDUSTRIES)
22 INTERNATIONAL, INC.,)
PLINT INK CORPORATION,)
23 BEATRICE/HUNT WESSON,)
FRANCISCAN CERAMICS, INC.,)
24 EMERSON & CUMING INC.,)
THE TIMES MIRROR COMPANY for)
25 LOS ANGELES TIMES and TIMES)
MIRROR PRESS,)
26 PPG INDUSTRIES, INC.,)
PARKER-HANNIFIN CORPORATION for)
27 BERTEA CORPORATION,)
DELTA AIR LINES, INC. for WESTERN)
28 AIRLINES,)

1 SOUTHWESTERN ENGINEERING CO.,)
THE UNIONOYAL GOODRICH TIRE)
2 COMPANY,)
INTERNATIONAL PAPER COMPANY,)
3 ARATEX SERVICES, INC. for RED STAR)
INDUSTRIAL SERVICE,)
4 MAYTAG CORPORATION for GAFFERS &)
SATTLER,)
5 CARNATION COMPANY,)
WELCH'S OVERALL CLEANING)
6 COMPANY, INC. for WELCH'S)
INDUSTRIAL UNIFORM,)
7 GENERAL FELT INDUSTRIES, INC., a)
division of KNOLL INTERNATIONAL)
8 HOLDINGS, INC.,)
WILLAMETTE INDUSTRIES INC. for)
9 WESTERN KRAFT,)
TRANSPORTATION LEASING CO. for THE)
10 GREYHOUND CORP.,)
NL INDUSTRIES, INC. for NL METALS,)
11 MCAULEY LCX CORPORATION,)
UNITED AIR LINES, INC.,)
12 THE PROCTOR & GAMBLE MANUFACTURING)
COMPANY,)
13 JAYBEE MANUFACTURING CORPORATION,)
SAFEMAY STORES, INC.,)
14 THE FLYING TIGER LINE INC.,)
LUXFER USA LIMITED,)
15 TREE ISLAND INDUSTRIES LTD.,)
GENERAL LATEX AND CHEMICAL CORP.,)
16 ARMCO INC.,)
REISNER METALS, INC.,)
17 GATX TERMINALS CORPORATION,)
DUNN-EDWARDS CORPORATION,)
18 HUGHES AIRCRAFT COMPANY,)
THE FIRESTONE TIRE & RUBBER COMPANY,)
19 MAX FACTOR & COMPANY,)
UNITED PARCEL SERVICE OF AMERICA,)
20 INCORPORATED,)
CALMAT CO. for CONROCK CO.,)
21 SUPRACOTE, INC.,)
FPCO OIL & GAS CO. for PETRO-LEWIS)
22 CORPORATION,)
VAN WATERS & ROGERS,)
23 DAVIDSON P.W.P.,)
KENOSHA AUTO TRANSPORT CORPORATION,)
24 AMERICAN CAN COMPANY/PRIMERICA)
CORPORATION,)
25 BORDEN, INC.,)
DEFT, INC.,)
26 COCA-COLA BOTTLING COMPANY OF LOS)
ANGELES,)
27 OWENS-ILLINOIS, INC.,)
CHAMPION INTERNATIONAL CORPORATION)
28 for ST. REGIS,)

1 HYDRIL COMPANY,)
 2 GEORGIA-PACIFIC CORPORATION,)
 3 LEVER BROTHERS COMPANY, INC.,)
 4 7UP/RC BOTTLING COMPANIES OF)
 5 SOUTHERN CALIFORNIA,)
 6 INTERNATIONAL EXTRUSION CORP.,)
 7 SPARKLETT'S DRINKING WATER)
 8 CORPORATION,)
 9 BJ-TITAN SERVICES COMPANY, for)
 10 B.J. SERVICES EQUIPMENT COMPANY,)
 11 LONGVIEW FIBRE COMPANY,)
 12 UNION CARBIDE CORPORATION,)
 13 THE COCA-COLA COMPANY,)
 14)
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Defendants.

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PARTIAL CONSENT DECREE

WHEREAS, the United States of America (hereinafter "United States"), on behalf of the Administrator of the United States Environmental Protection Agency (hereinafter "EPA"), has filed concurrently with this Partial Consent Decree a complaint in this matter pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (hereinafter "CERCLA"), seeking to compel the Defendants (those parties identified in Section II (Parties) of this Partial Consent Decree, and hereinafter referred to as "Defendants") to perform certain remedial actions and to recover certain response costs that have been and will be incurred by the United States in response to alleged releases and threatened releases of hazardous substances from the landfill known as the Operating Industries, Inc. site (hereinafter "OII" or the "Site") located at 900 Potrero Grande Drive, Monterey Park, California.

WHEREAS, the State of California, on behalf of the Department of Health Services (hereinafter "the State") has filed concurrently with this Partial Consent Decree a complaint in this matter pursuant to CERCLA, the Hazardous Substance Account, California Health and Safety Code §§ 25300, et seq., California Civil Code § 3494, and California Health and Safety Code §§ 205 and 206 seeking to compel the Defendants to perform certain remedial actions and to recover certain response costs that have

1 been incurred by the State in response to alleged releases and
2 threatened releases of hazardous substances from the Site.
3

4 WHEREAS, the United States and the State allege that the
5 Operating Industries, Inc. landfill is a facility as defined in
6 Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
7

8 WHEREAS, the United States and the State allege that the
9 Defendants are persons, as defined in Section 101(21) of CERCLA,
10 42 U.S.C. § 9601(21), and California Health and Safety Code
11 § 25319 and that wastes and constituents thereof generated by the
12 Defendants sent to and disposed of at the Site, are "hazardous
13 substances," as defined in Section 101(14) of CERCLA, 42 U.S.C.
14 § 9601(14), and California Health and Safety Code §§ 25316 and
15 25317.
16

17 WHEREAS, the United States and the State allege that the
18 past, present, and potential migrations of hazardous substances
19 from the Site constitute actual and threatened "releases," as
20 defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and
21 California Health and Safety Code §§ 25320 and 25321, and further
22 allege that the Defendants are persons subject to liability under
23 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and California
24 Health and Safety Code § 25360.
25

26 WHEREAS, pursuant to Sections 121 and 122 of CERCLA, the
27 United States, the State and the Defendants have each stipulated
28 and agreed to the making and entry of this Partial Consent Decree

1 (hereinafter "Decree" or "Consent Decree") prior to the taking of
2 any testimony, and in full settlement of the claims raised in the
3 complaints.
4

5 WHEREAS, the United States, the State and the Defendants
6 have agreed upon a settlement pursuant to which certain
7 Defendants are obligated to conduct certain remedial work and to
8 make payments to the EPA and the State, and other Defendants are
9 obligated to make payments to the EPA and the State.
10

11 WHEREAS, the United States, the State and the Defendants
12 agree that the settlement of the claims raised in the complaints
13 and entry of this Consent Decree is in good faith, in an effort
14 to avoid expensive and protracted litigation, without any
15 admission or finding of liability or fault as to any allegation
16 or matter.
17

18 NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as
19 follows:
20

21 I. JURISDICTION
22

23 The Court has jurisdiction over the subject matter of this
24 action and the signatories to this Decree pursuant to CERCLA, 42
25 U.S.C. §§ 9601, et seq. and 28 U.S.C. §§ 1331, 1345, and pendent
26 jurisdiction over the claims arising under the laws of
27 California. The Defendants shall not challenge the Court's
28 jurisdiction to enter and enforce this Decree. Defendants listed

1 in Section II (Parties) waive service of summons and, for the
2 purpose of this Decree, agree to submit themselves to the
3 jurisdiction of this Court.

4 5 **II. PARTIES**

7 A. The Parties to this Decree are the United States of
8 America, the State, the California Hazardous Substance Account
9 and the Defendants. All actions taken by the State pursuant to
10 this Decree, including all approvals, reservations of rights, and
11 covenants not to sue are solely those of the California
12 Department of Health Services (DHS) and of no other agency except
13 that the California Attorney General also covenants not to sue
14 the Defendants, as provided in Section XXX (Covenant Not to Sue).
15 Defendants are those entities listed herein.

17 B. Settling defendants are either defendants that have
18 agreed to pay the specified amounts under the Schedules set forth
19 in Attachment A and are identified in Attachment A ("Cash
20 Defendants"), or other settling defendants that have agreed to
21 undertake the Work and certain other obligations set forth in
22 this Decree and are identified in Attachment B ("Work
23 Defendants").

24 25 **III. DENIAL OF LIABILITY**

27 The Defendants deny any and all legal or equitable liability
28 under any federal, state, or local statute, regulation,

1 ordinance, or common law for any response costs, damages or
2 claims caused by or arising out of conditions at or arising from
3 the OII Site. By entering into this Decree, or by taking any
4 action in accordance with it, Defendants do not admit any
5 allegations contained herein or in the complaints, nor do
6 Defendants admit liability for any purpose or admit any issues of
7 law or fact or any responsibility for the alleged release or
8 threat of release of any hazardous substance into the
9 environment. Nothing in this Section shall alter Defendants'
10 agreement not to challenge the Court's jurisdiction as set forth
11 in Section I (Jurisdiction).

12 13 **IV. BINDING EFFECT**

15 This Decree shall apply to and be binding upon the
16 signatories, their successors, and assigns. No change in
17 ownership or corporate or partnership status shall in any way
18 alter the Defendants' responsibilities under this Decree. Each
19 Defendant shall be responsible and shall remain responsible for
20 carrying out all activities required of that particular Defendant
21 under this Decree. The Work Defendants shall provide a copy of
22 this Decree, as entered, and shall provide all relevant additions
23 to the Decree, as appropriate, to each person, including all
24 contractors and subcontractors, retained to perform the Work
25 contemplated by this Decree, and shall condition any contract for
26 the Work upon compliance with this Decree.

27 ///

28 ///

1 Work Defendants shall be jointly and severally responsible
2 for the performance of the Work Defendants' obligations outlined
3 in this Decree. In the event of the inability to pay or
4 insolvency of any one or more of the Work Defendants, regardless
5 of whether or not that Work Defendant or Work Defendants enter
6 into formal bankruptcy proceedings, or in the event that for any
7 other reason one or more of the Work Defendants do not
8 participate in the implementation of the Work, the remaining Work
9 Defendants agree and commit to complete the Work and activities
10 provided for in this Decree.

11
12 V. SITE BACKGROUND
13

14 The following is a summary of the Site background as alleged
15 by the United States and the State which, for the purposes of
16 this Decree, Defendants neither admit nor deny:
17

18 A. The Operating Industries, Inc. landfill is a 190-acre
19 facility, as that term is defined in Section 101(9) of CERCLA, 42
20 U.S.C. § 9601(9), located at 900 Potrero Grande Drive, Monterey
21 Park, California. The Site operated from 1948 through 1984, and,
22 over the course of its operation, accepted industrial solid,
23 liquid and hazardous wastes and municipal trash. Wastes accepted
24 at the OII Site include hazardous substances as defined in
25 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and California
26 Health and Safety Code §§ 25316 and 25317.

27 ///

28 ///

1 B. The Site is located on the southwestern flank of the La
2 Merced hills (also called the Montebello hills), and is divided
3 by the California Highway 60 (Pomona Freeway), which runs roughly
4 east-west through the Site, dividing it into a 45-acre North
5 Parcel and 145-acre South Parcel. The Site is located at the
6 boundary between the San Gabriel groundwater basin to the north
7 and the Los Angeles Coastal groundwater basin to the south. The
8 important water-bearing units underlying the Los Angeles and San
9 Gabriel Basins, as well as the Site, are from oldest to youngest,
10 upper Pliocene Pico Formation, lower Pleistocene San Pedro
11 Formation, upper Pleistocene older alluvium (including "terrace
12 gravels"), and the Recent Alluvium (California Department of
13 Water Resources, 1961, 1966). The San Pedro Formation contains
14 the five major aquifers of the Los Angeles Coastal Plain and the
15 San Gabriel Basin, the Jackson, Hollydale, Lynwood, Silverado and
16 Sunnyside aquifers. The lower Pliocene Repetto formation and
17 older formations are found at depths greater than 1500 feet. The
18 Site is approximately one mile east of the Whittier Narrows
19 groundwater recharge area and the Rio Mondo River.

20
21 C. The Site was proposed for inclusion on the National
22 Priorities List (NPL) in October, 1984, and was subsequently
23 placed on the NPL in May, 1986, in accordance with
24 Section 105(a)(8) of CERCLA, 42 U.S.C. § 9605(a)(8).
25

26 D. The contaminants found at the Site include hazardous
27 substances as defined by CERCLA § 101(14) or as defined by
28 California Health and Safety Code §§ 25316 and 25317.

1 E. There have been releases of hazardous substances from
2 the Site and the Site poses numerous threats to human health and
3 the environment. The population in proximity to the Site include
4 the nearby residents of the City of Montebello and the City of
5 Monterey Park, those who travel on the section of the Pomona
6 Freeway which transects the Site, and workers in the several
7 businesses located on or near the Site.
8

9 F. EPA is currently performing the Remedial Investigation/
10 Feasibility Study ("RI/FS") at the Site. The RI/FS was begun in
11 1984. Phases I and II of this study have been largely completed,
12 and EPA is currently finishing Phase II and initiating Phase III
13 of the RI. When the RI/FS is completed, it will result in the
14 selection, design and implementation of a final overall remedy
15 for the Site.
16

17 VI. PURPOSE 18

19 The purpose of this Decree is to resolve the dispute among
20 the Parties as to whether remedial action may be necessary for
21 the Leachate Management and Site Control and Monitoring Operable
22 Units, (as described in Appendices A and B) to protect the public
23 health, welfare, and the environment from conditions which may be
24 present at the OII Site; obtain reimbursement from the Defendants
25 for certain of Plaintiffs' response costs; and settle any and all
26 claims against Defendants asserted by Plaintiffs in the
27 complaints filed in this matter.
28

1 This Decree is also intended to serve the public interest by
2 protecting the public health, welfare, and the environment from
3 alleged releases and threatened releases of hazardous substances
4 at or from the OII Site by the implementation by the Work
5 Defendants of remedial actions and operations, monitoring, and
6 maintenance outlined in Section IX (Work to be Performed) of this
7 Decree.
8

9 The Parties recognize that the final remedy will be
10 determined after completion of the RI/FS and execution by the EPA
11 of a Record of Decision which determines the final remedy. All
12 Parties agree and the Court hereby determines that the remedies
13 selected by the Records of Decision which are the subject of this
14 Decree are consistent with the final remedy and are consistent
15 with the National Oil and Hazardous Substances Pollution
16 Contingency Plan, 40 C.F.R. Part 300 (hereinafter "National
17 Contingency Plan" or "NCP"). The Work performed in the
18 implementation of these Operable Units shall meet the substantive
19 standards of all "applicable requirements" and "relevant and
20 appropriate requirements" as those terms are defined in 40 C.F.R.
21 § 300.6, as generally described in CERCLA Compliance with Other
22 Environmental Statutes, October 2, 1985 (50 Fed. Reg. 47946,
23 November 20, 1985), as required by Section 121 of CERCLA, 42
24 U.S.C. § 9621, and as provided in Appendices A and B to this
25 Decree.
26
27
28

VII. DEFINITIONS

A. "Appendix A" shall mean the Record of Decision for the Leachate Management Operable Unit.

B. "Appendix B" shall mean the Record of Decision for the Site Control and Monitoring Operable Unit.

C. "Appendix C" shall mean the OII Landfill SCM and LMS Scope of Work.

D. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986).

E. "Contractor" shall mean the individual, company or companies retained by or on behalf of the Work Defendants to undertake and complete the Work. Each contractor and subcontractor shall be qualified to do those portions of the Work for which it is retained.

F. "Costs" or "Response Costs" shall mean oversight, administrative, enforcement, removal, investigative and remedial or other expenses incurred or to be incurred by EPA or the State relative to the OII Site.

///

G. "Construction" shall mean the phases of the Work involving the construction of the remedy, in accordance with the Design documents, the RODs and this Decree.

H. "Covered Matters" shall mean those conditions which the alternatives selected in the RODs (attached as Appendices A and B) are designed to remedy, the Work implemented under Section IX (Work to be Performed), oversight costs associated with the performance of that Work and for all past response costs, including interest accrued thereon, incurred by the United States, the State and the California Hazardous Substance Account up to June 1, 1988. Covered Matters specifically do not include removals, remedial actions which will be implemented pursuant to the final remedy, the gas control and any future operable unit(s), or any environmental condition which is identified in the RI/FS (except to the extent those removals, remedial actions, or those environmental conditions are already covered by Appendices A or B or the Work). The Parties also agree that remedial actions for groundwater contamination, if any, are not Covered Matters under this Decree.

I. "DHS" shall mean the California Department of Health Services.

J. "Defendants" shall include both the Cash Defendants and the Work Defendants. "Cash Defendants" shall mean those parties identified as Defendants and listed as such in Attachment A to this Decree. "Work Defendants" shall mean those parties

1 identified as Defendants and listed as such in Attachment B to
2 this Decree.

3
4 K. "Design(s)" shall mean the phases of the Work wherein
5 engineering plans and technical specifications are developed for
6 implementation of the remedial actions, in accordance with the
7 RODs and this Decree and the EPA Superfund Remedial Design and
8 Remedial Action Guidance, (EPA OSWER Directive No. 9355.0-4A,
9 June 1986) ("RD/RA guidance").

10
11 L. "EPA" shall mean the United States Environmental
12 Protection Agency.

13
14 M. "Environment" shall mean (1) the navigable waters, the
15 waters of the contiguous zone, and the ocean waters of which the
16 natural resources are under the exclusive management of the
17 United States under the Fishery Conservation and Management Act,
18 and (2) any other surface water, groundwater, drinking water
19 supply, land surface or subsurface strata, or ambient air within
20 the United States or under the jurisdiction of the United States,
21 as defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6).

22
23 N. "Hazardous substances" shall mean any substance included
24 in the definition of Section 101(14) of CERCLA, 42 U.S.C.
25 § 9601(14), or as defined by California Health and Safety Code
26 §§ 25316 and 25317.

27 ///

28 ///

1 O. "National Contingency Plan" or "NCP" shall refer to the
2 National Oil and Hazardous Substances Pollution Contingency Plan,
3 40 C.F.R. Part 300, and shall be used as that term is referred to
4 in Section 105 of CERCLA, 42 U.S.C. § 9605.

5
6 P. "OII Site" or the "Site" shall mean the landfill located
7 at 900 Potrero Grande Drive, in Monterey Park, California.

8
9 Q. "Oversight" shall mean inspection by the EPA, the United
10 States Army Corps of Engineers (USACE), the State, or their
11 representatives, of remedial work and all other actions necessary
12 to verify the adequacy of performance of activities and reports
13 relating to the OII Site.

14
15 R. "Parties" shall mean the United States, the State and
16 the Defendants.

17
18 S. "Plaintiffs" shall mean the United States, the State,
19 and the California Hazardous Substance Account.

20
21 T. "Plan(s)" shall mean the plans developed by the Work
22 Defendants which detail the elements of Work to be conducted
23 pursuant to this Decree.

24
25 U. "Records of Decision" or "RODs" shall mean the documents
26 signed by the EPA Region IX Deputy Regional Administrator on July
27 31, 1987, and November 16, 1987 which describe the remedial

28 ///

1 actions of two of the Operable Units to be conducted at the Site,
2 and which are attached hereto as Appendices A and B.

3
4 V. "Release" shall mean any spilling, leaking, pumping,
5 pouring, emitting, emptying, discharging, injecting, escaping,
6 leaching, dumping, or disposing into the environment (including
7 the abandonment or discarding of barrels, containers, and other
8 closed receptacles containing any hazardous substance or
9 pollutant or contaminant) as defined in Section 101(22) of
10 CERCLA, and California Health and Safety Code §§ 25320 and 25321.

11
12 W. "Report(s)" shall mean the reports developed by the Work
13 Defendants in compliance with this Decree, detailing the Work and
14 the results of its implementation.

15
16 X. "State" shall mean the State of California on behalf of
17 the Department of Health Services.

18
19 Y. "United States" shall mean the United States of America.

20
21 Z. "USACE" shall mean the United States Army Corps of
22 Engineers.

23
24 AA. "Work" shall mean performance of the remedial
25 alternatives selected in the Leachate Management and the Site
26 Control and Monitoring RODs, and actions approved pursuant to the
27 provisions of Section IX (Work to be Performed) herein, and
28 Appendix C.

1 BB. "Work Completion Report" shall mean the report developed
2 by the Work Defendants in compliance with this Decree, detailing
3 the Work performed pursuant to this Decree.

4
5 VIII. PAYMENTS BY CASH DEFENDANTS

6
7 Each Cash Defendant listed in Attachment A shall make
8 payments to EPA and the State as set forth in Attachment A.
9 Except as specifically provided for in Attachment A, all payments
10 shall be made within thirty (30) days of notice of entry of this
11 Decree.

12
13 Any such payments set forth in Attachment A not scheduled to
14 be paid within thirty (30) days of notice of entry of this Decree
15 shall be secured by a surety bond, a letter of credit or other
16 security device acceptable to EPA, which shall be delivered to
17 EPA within thirty (30) days of notice of entry of this Decree.
18 The payments of such amounts shall fully relieve each Cash
19 Defendant of its responsibility for Covered Matters and shall
20 entitle each Cash Defendant to Contribution Protection under
21 Section XXIX (Contribution Protection) and to the Covenant Not to
22 Sue under Section XXX (Covenant Not to Sue) with respect to all
23 such Covered Matters, whether or not the other Defendants fulfill
24 their obligations under this Decree. If EPA and the State do not
25 receive all payments on behalf of any Cash Defendant under this
26 Decree, that Defendant shall not be entitled to any benefits of
27 this Decree, including those under the provisions of Section XXIX
28 (Contribution Protection) and Section XXX (Covenant Not to Sue).

1 The Work Defendants shall have no responsibility to the
2 United States, EPA, the State, the California Hazardous Substance
3 Account, any other Defendant, or any third party for any payment
4 required of, or failure to pay by, any Cash Defendant under this
5 Section.

6
7 IX. WORK TO BE PERFORMED

8
9 A. General Obligations Regarding the Work

10
11 1. The Work Defendants shall finance and perform, as set
12 forth in this Decree, the implementation of the Work as required
13 by this Decree and Attachments and Appendices hereto.

14
15 2. Notwithstanding any approvals which may be granted by
16 the EPA, the State, or other governmental entities, the Work
17 Defendants shall not be relieved of any and all liability, if
18 any, which may arise from or relate to their acts or omissions or
19 the acts or omissions of any of their contractors,
20 subcontractors, or any other person acting on their behalf in the
21 performance of the Work or their failure to perform or complete
22 the Work.

23
24 3. The Work Defendants shall design, implement, and
25 complete the Work in accordance with the MCP, and with the
26 standards, specifications, and schedule of completion set forth
27 in or approved by the EPA pursuant to this Section. The Court
28 finds and the Parties agree that the Records of Decision, as set

1 forth in Appendices A and B, and the Work if performed in
2 compliance with the requirements of this Decree, are consistent
3 with the MCP.

4
5 4. All activities undertaken by any Defendant pursuant to
6 this Decree shall be undertaken in accordance with the
7 requirements of all applicable state and federal laws,
8 regulations, and all "applicable" and "relevant and appropriate"
9 federal and state environmental requirements as identified
10 pursuant to Section XV (Compliance with Applicable Laws and
11 Regulations).

12
13 5. The Work Defendants shall select a contractor or
14 contractors to conduct the Work which has expertise in
15 investigation, analysis and remediation of hazardous waste
16 problems, with particular expertise in site control and
17 monitoring activities as well as the qualifications to design,
18 construct, operate and maintain a leachate treatment plant. All
19 Work performed by the Work Defendants shall be performed by
20 qualified contractors in accordance with the conditions and
21 schedules specified in this Decree. EPA will contract with a
22 qualified person to oversee and review the conduct of the Work
23 performed by Work Defendants.

24
25 6. Except where noted otherwise, all dates referred to in
26 this Decree or any Attachments and Appendices to the Decree are
27 calendar days; however, should a deadline fall on a weekend or a
28 ///

1 federal holiday, the deadline shall be construed to continue to
2 the next business day.

3
4 7. While the Work Defendants may collect, treat, stage, and
5 secure materials on-site, they may only redeposit material back
6 into the Site with the explicit approval of EPA.

7
8 8. The Work Defendants shall dispose of any materials taken
9 off-site in accordance with the EPA's Revised Procedures for
10 Implementing Off-Site Response Actions ("Off-site Policy") (EPA
11 OSWER Directive 9804.11, November 13, 1987), if applicable.

12
13 9. The Work Defendants shall submit all required reports
14 pursuant to the provisions of Appendix C, this Section and
15 Section XVI (Data Exchange).

16
17 10. The treatment facility constructed under the terms of
18 this Decree shall not be used to treat wastes other than those
19 associated with the OII Site.

20
21 11. EPA will make available to Work Defendants relevant EPA
22 Region IX guidance documents.

23
24 12. If EPA disapproves work being performed by Work
25 Defendants, the Work Defendants shall have ten (10) days from
26 receipt of such disapproval, if necessary, to correct the work,
27 or a longer period if deemed appropriate by EPA.

28 ///

1 B. Work To Be Undertaken

2

3 This Work and the applicable schedule and required
4 deliverables are described more fully in the OII Landfill SCM/LMS
5 Scope of Work ("Scope of Work"), attached as Appendix C to this
6 Decree. The Records of Decision for the Operable Units addressed
7 in this Decree are set forth in Appendices A and B. In general
8 terms, the Leachate Management Operable Unit involves design,
9 construction and operation of a Leachate Treatment System (as
10 defined in Appendix C) ("LTS"). The Site Control and Monitoring
11 Operable Unit is intended to stabilize the OII Site during the
12 period before the final remedy for the Site is implemented. It
13 involves operation, monitoring and maintenance of environmental
14 systems at the Site.

15

16 1. Site Control and Monitoring

17

18 The objective of the Site Control and Monitoring ("SCM")
19 activities is to stabilize the OII Site during the period prior
20 to implementation of the final remedy for the Site. These
21 activities include control, maintenance, and monitoring of all
22 systems at the Site, and system improvements. These systems
23 include: gas extraction and the air dike, leachate collection
24 and treatment, irrigation, access roads, stormwater drainage,
25 Site security, and slope repair and erosion control. EPA will
26 retain responsibility for Site security. The SCM activities will
27 be conducted in accordance with the EPA Site Control and

28 ///

Monitoring Record of Decision, dated July 31, 1987 (attached hereto as Appendix B).

2. Leachate Management

The Leachate Management Operable Unit includes predesign, design, and construction of an onsite leachate treatment plant; and operation of the treatment plant following its completion. The objective of remedial predesign and design is to develop a complete design report, including complete design plans and specifications for a leachate treatment facility and its related facilities, including necessary pipelines. The leachate treatment facility will be located on the north parcel of the OII Site and will be designed consistent with the EPA Leachate Management Record of Decision, dated November 16, 1987 (attached hereto as Appendix A). The on-site treatment facility will be used to treat leachate and other liquids associated with the OII Site. The treatment facility will be designed to provide the flexibility required to treat varying qualities of liquids, and to allow for expansion to treat increased volumes of leachate or other liquids related to the OII Site as needed.

The objective of leachate treatment plant construction is to construct a complete functional treatment facility, and any related facilities specified in the Final LTS Design, as defined in Appendix C. The Work Defendants shall be responsible for furnishing, in accordance with the Final LTS Design, all plant, labor, equipment, and materials required for the treatment

facility, and related facilities at the OII Site, and shall ensure that all facilities are complete and functional.

Final Design documents for Site Control and Monitoring and Leachate Management, which shall include plans, specifications, construction schedules, and other pertinent information, shall be submitted to EPA in accordance with the schedule in Appendix C of this Decree.

C. Funding Limitations to Work

The Parties agree with respect to the Work to be performed under this Section that the Work Defendants' obligation to expend Work Defendants' funds for (1) the Leachate Management System (as described in Appendix C) shall not exceed \$14,000,000 and (2) Site Control and Monitoring not relating to leachate management (as described in Appendix C) shall not exceed \$20,000,000, except as otherwise provided in this Paragraph C.

In the event that Work Defendants' funds referenced in the previous sentence are exhausted in the performance of the Work to be performed under this Decree, the Work shall also be funded pursuant to the provisions of Section VIII (Payments by Cash Defendants), Section X (Escrow Account) herein and Attachment A hereto, and Work Defendants agree to continue to perform the Work until these additional funds, if any, and any funds received pursuant to EPA's direction or from EPA, if any, are exhausted, or until nine months after the date the ROD for the final Site

1 remedy has been signed, or eight (8) years after the effective
2 date of this Decree, whichever is earliest. Upon the occurrence
3 of the earliest event described in the preceding sentence, the
4 Work Defendants shall have satisfied their obligations for
5 Covered Matters under this Decree, and this Decree shall be
6 terminated as provided in Section XLI (Termination and
7 Satisfaction).

8
9 At the time of EPA approval of the final LTS Closecut
10 Report, as defined in Appendix C, or an EPA determination under
11 Paragraph D of Section XXII (Stipulated Penalties) made six (6)
12 months or longer after EPA approval of the LTS Final Design, as
13 defined in Appendix C, or earlier if agreed to by Work Defendants
14 and EPA, the Work Defendants' funding limitations of \$14,000,000
15 for Leachate Management System and \$20,000,000 for Site Control
16 and Monitoring not related to leachate management shall be
17 consolidated into a \$34,000,000 limit on the obligations of Work
18 Defendants for both Leachate Management and Site Control and
19 Monitoring.

20
21 After eight (8) years after the effective date of this
22 Decree, or nine (9) months after the date the ROD for the final
23 site remedy has been signed, whichever is sooner, should the Work
24 Defendants have expended less than \$34,000,000 for the Work, then
25 the difference between the \$34,000,000 and the amount expended
26 shall be placed in the "Cash" Escrow Account for additional Site
27 remediation work not covered by this Decree and shall be expended
28 as determined by EPA in consultation with the Work Defendants.

1 The following expenditures specifically shall not be
2 allocable against the funding limitations of this Paragraph:

3
4 1. any fines or penalties assessed for non-compliance with
5 the provisions of this Decree or other laws;

6
7 2. Work Defendants' oversight costs including any internal
8 corporate costs, or OII Steering Committee administrative and
9 legal fees (as distinguishable from Work Defendants' Contractor's
10 project management costs, which are so allocable);

11
12 3. costs associated with the judicial resolution of any
13 disputes under Section XXIV (Dispute Resolution);

14
15 4. any costs arising out of claims or the defense of claims
16 for personal injury, property damage, or other third party
17 claims;

18
19 5. the costs of independent technical experts as provided
20 for in Paragraph B of Section XXIV (Dispute Resolution); or,

21
22 6. the costs incurred by EPA resulting from any EPA
23 determination under Paragraph D of Section XXII (Stipulated
24 Penalties).

25
26 Nothing contained in this Paragraph shall preclude Work
27 Defendants from asserting that such expenditures, excluding fines
28 or penalties, are response costs under CERCLA and the NCP.

1 For Work which Work Defendants wish to apply against their
2 funding limitations, annual submittals detailing the costs of
3 such Work shall be provided to EPA as required under this
4 Section IX (Work to be Performed), Section X (Escrow Account),
5 and Appendix C.

6
7 D. Responsibility for Work
8

9 As to the Cash Defendants, the Work Defendants shall have
10 exclusive responsibility for the performance of the Work and the
11 Cash Defendants shall have no responsibility to the United
12 States, EPA, the State, the California Hazardous Substance
13 Account, any other Defendant, or any third party for the
14 performance, or failure of performance, of the Work Defendants.

15
16 X. ESCROW ACCOUNT
17

18 Work Defendants shall establish the "OII Steering Committee
19 Escrow Account - Consent Decree I" (Escrow Account), within ten
20 (10) working days after the effective date of this Decree. The
21 Escrow Account shall have one interest bearing account titled
22 "Work" and one interest bearing account titled "Cash", and these
23 accounts shall be segregated from each other.

24
25 A copy of the Escrow Agreement establishing the Escrow
26 Account shall be sent to EPA and the State as soon as possible
27 thereafter for approval primarily to ensure that the escrowed
28 funds will be handled as set forth by this Decree. Neither EPA,

1 nor the State, through its approval of the terms of the Escrow
2 Account, guarantees the sufficiency of the Escrow Account
3 established by this Section.
4

5 A. Money received from the Work Defendants shall be
6 deposited in the "Work" Escrow Account. The Escrow Agreement
7 shall instruct and authorize the Escrow Manager to disburse the
8 money in the "Work" Escrow Account for the following:
9

10 1. To pay the Work Defendants' contractor(s) for the Work;

11
12 2. To pay for other expenses, including any incurred
13 penalties, required to be paid by the Work Defendants pursuant to
14 this Decree and Attachments hereto;

15
16 3. To reimburse the Hazardous Substance Superfund for
17 \$1,400,000 for past response costs incurred by EPA, as provided
18 in Section XX (Reimbursement of Past Costs) within thirty (30)
19 days of notice of entry of this Decree; and

20
21 4. To reimburse the State for \$500,000 for past response
22 costs incurred by the State, as provided in Section XX
23 (Reimbursement of Past Costs) within thirty (30) days of notice
24 of entry of this Decree.

25
26 The Work Defendants shall deposit \$1,900,000 in the "Work"
27 Escrow Account within thirty (30) days of notice of entry of this
28 Decree.

1 B. Money received from the Cash Defendants listed in
2 Attachment A, Schedule 1 shall be deposited in the "Cash" Escrow
3 Account. The Escrow Agreement shall instruct the Escrow Manager
4 to use the money in the "Cash" Escrow Account for the purposes
5 and in the amounts directed by EPA and as provided for in
6 Attachment A to this Decree. The purposes include the following:
7 reimbursement of EPA future response and oversight costs, past
8 response costs, Work in excess of the Work Defendants' funding
9 limitations pursuant to Paragraph C of Section IX (Work to be
10 Performed), and for additional Site remediation work pursuant to
11 Paragraph C of Section IX (Work to be Performed). Payments to
12 EPA pursuant to this Paragraph B for reimbursement of: (1) EPA
13 past response costs, including interest accrued thereon, as of
14 June 1, 1988, will not exceed these actual costs which EPA
15 currently estimates to be in excess of \$21,500,000; and (2) EPA
16 costs for the oversight of the Work under this Decree will not
17 exceed these actual costs which EPA currently estimates will be
18 \$6,000,000. Use of the "Cash" Escrow Account for Work in excess
19 of Work Defendants' funding limitations and additional Site
20 remediation work, as both are described in Paragraph C of
21 Section IX (Work to be Performed), shall be subject to the same
22 provisions as the use of the "Work" Escrow Account for Work, and
23 the provisions of Paragraph C of Section IX (Work to be
24 Performed).

25
26 C. Other funds received pursuant to EPA's direction or from
27 EPA, if any, shall be placed into the "Cash" Escrow Account.

28 ///

1 D. Interest received on each Escrow Account shall be paid
2 into the account on which it was received, may be used first to
3 pay for the account fees thereon and then shall be used in the
4 same manner and for the same purposes as the other funds in the
5 account.

6
7 E. Payment of money by Defendants to the Escrow Accounts is
8 not a fine, penalty or monetary sanction.

9
10 F. The Escrow Agreement shall require that the Escrow
11 Manager prepare and submit to the Work Defendants monthly
12 statements on money received and disbursements for the prior
13 thirty (30) days for both the "Work" and the "Cash" accounts, and
14 the balances in the accounts as of the date of the statements. A
15 copy of this monthly statement shall be sent promptly to EPA and
16 the State. This monthly statement shall be included in the next
17 monthly progress report, unless a different schedule is agreed to
18 by EPA and the Work Defendants. In addition, within sixty (60)
19 days of the establishment of the Escrow Account, and every ninety
20 (90) days thereafter, in conjunction with the issuance of the
21 most recent regular monthly statement by the Escrow Manager, the
22 Work Defendants shall submit a financial report to EPA and the
23 State. The financial report shall include cash flow projections
24 for the amount of money estimated to be necessary for the "Work"
25 Escrow Account expenses described in Subparagraphs 1 and 2 of
26 Paragraph A of this Section, for the following ninety (90) day
27 period. Subject to the funding limitations in Paragraph C of
28 Section IX (Work to be Performed), if the amount of money in the

1 "Work" Escrow Account is less than the amount projected by the
2 Work Defendants' report to be needed for the following ninety
3 (90) days, Work Defendants shall deposit in the "Work" Escrow
4 Account, within thirty (30) days, sufficient money to bring the
5 level of the "Work" Escrow Account up to the amount projected to
6 be needed for the following ninety (90) days.

7
8 G. Work Defendants shall submit an annual report to EPA and
9 the State which shall include a summary of money received and
10 disbursements for the preceding twelve (12) month period. This
11 financial report also shall identify, in a format corresponding
12 to the SCM/LMS Master Plan described in Appendix C, all expenses
13 incurred which the Work Defendants assert apply against the
14 funding limitations in Paragraph C of Section IX (Work to be
15 Performed).

16
17 H. As provided in Section IX (Work to be Performed), eight
18 (8) years after the effective date of this Decree or nine (9)
19 months after the ROD for the final site remedy has been signed,
20 whichever is sooner, should Work Defendants have expended less
21 than \$34,000,000 for the Work, then the difference between the
22 \$34,000,000 and the amount expended shall be placed in the "Cash"
23 Escrow Account for Site remediation work not covered by this
24 Decree and shall be expended as determined by EPA in consultation
25 with the Work Defendants.

26
27 I. As provided in Section IX (Work to be Performed) and no
28 sooner than the earlier of eight (8) years after the effective

1 date of this Decree or nine (9) months after the date the ROD for
2 the final Site remedy has been signed, or upon termination of the
3 terms of this Decree pursuant to Section XLI (Termination and
4 Satisfaction), or upon Work Defendants' suspension of performance
5 of the Work as described in Paragraph D(1) of Section XXII
6 (Stipulated Penalties), the funds from the "Cash" Escrow Account
7 shall be distributed as directed by EPA. In addition, in any of
8 these events except for suspension of Work Defendants'
9 performance of the Work as described in Paragraph D(1) of Section
10 XXII (Stipulated Penalties), additional funds provided pursuant
11 to Paragraph H of this Section, if any, shall be distributed as
12 directed by EPA.

13
14 XI. WORKER HEALTH AND SAFETY PLAN

15
16 The Worker Health and Safety Plan that the Work Defendants
17 will submit to EPA pursuant to Section IX (Work to be Performed)
18 and Appendix C to this Decree shall satisfy the applicable
19 requirements of the Occupational Safety and Health Guidance for
20 Hazardous Waste Site Activities (October 1985 (DHEC 5 NIOSH)
21 Publication No. 85-115] and EPA's Standard Operating Safety
22 Guides (EPA, OERR, November 1984). The Emergency Response Plan
23 that the Work Defendants will submit to EPA pursuant to Section
24 IX (Work to be Performed) and Appendix C to this Decree shall
25 address both workers at the Site and public exposure to releases
26 or spills at and from the Site.

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1 The Parties shall use best efforts to coordinate on-site
2 activity plans.
3

4 XII. QUALITY ASSURANCE/QUALITY CONTROL
5

6 A. The Quality Assurance/Quality Control ("QA/QC") Plan that
7 the Work Defendants shall submit pursuant to Section IX (Work to
8 be Performed) and Appendix C to this Decree shall, where
9 applicable, be prepared in accordance with current EPA guidance,
10 Interim Guidelines and Specifications for Preparing Quality
11 Assurance Project Plans, QAMS-005/80, and relevant EPA Region IX
12 guidance. Additionally, the QA/QC Plan shall include procedures
13 necessary for the implementation of trial test(s) of the pumping,
14 treatment and any other process used as part of the Work. The
15 QA/QC plan shall include a description of the mechanism used to
16 verify that the processes are operating within acceptable limits.
17 Upon approval and notice by EPA to the Work Defendants, the Work
18 Defendants shall implement the Plan.

19
20 B. The Work Defendants shall use QA/QC procedures in
21 accordance with the QA/QC plans submitted pursuant to this
22 Decree, and shall utilize standard EPA chain of custody
23 procedures, as documented in the National Enforcement
24 Investigations Center Policies and Procedures Manual as revised
25 in May 1986, and the National Enforcement Investigations Center
26 Manual for the Evidence Audit, published in September 1981, for
27 all sample collection and analysis activities, unless other
28 procedures are approved by EPA. In order to provide quality

1 assurance and maintain quality control regarding all samples
2 collected pursuant to this Decree, the Work Defendants shall
3 ensure that the following QA/QC measures are employed at
4 laboratories utilized for analyses:
5

6 1. Any laboratory utilized by the Work Defendants for
7 analysis of samples taken pursuant to this Decree shall provide
8 for access of EPA personnel and EPA authorized representatives to
9 assure the accuracy of laboratory results related to the OII
10 Site.
11

12 2. Any laboratory utilized by the Work Defendants for
13 analysis of samples taken pursuant to this Decree shall perform
14 all analyses according to EPA methods or methods deemed
15 satisfactory to EPA and submit all protocols to be used for
16 analysis to EPA in the plans and documents required under this
17 Decree.
18

19 3. All laboratories utilized by the Work Defendants for
20 analysis of samples taken pursuant to this Decree shall
21 participate in an EPA or EPA equivalent QA/QC program. As part
22 of the QA/QC program and upon request by EPA, such laboratories
23 shall perform, at no cost to Plaintiffs, analyses of samples
24 provided by EPA to demonstrate the quality of each laboratory's
25 data.
26

27 ///

28 ///

///

1 XIII. PROJECT COORDINATORS

2
3 A. By the effective date of this Decree, EPA, the State and
4 the Work Defendants shall each designate a Project Coordinator to
5 monitor the progress of the Work, to coordinate communication
6 among the Parties and to oversee the implementation of this
7 Decree. EPA, the State, and the Work Defendants each have the
8 right to change their respective Project Coordinator. Such a
9 change shall be accomplished by notifying the other Parties in
10 writing at least seven calendar days prior to the change. To the
11 maximum extent possible, communications between the Work
12 Defendants, EPA and the State and all documents, including
13 reports, approvals, and other correspondence concerning the
14 activities performed pursuant to the terms and conditions of this
15 Decree, shall be directed through the Project Coordinators. The
16 role of the State Project Coordinator shall be consistent with
17 the provisions of Paragraphs A and D of Section XXXIV (State and
18 Local Agency Participation), and EPA shall be the lead agency (as
19 defined in the NCP).

20
21 The EPA Project Coordinator shall have the authority vested
22 in the On-Scene Coordinator by 40 C.F.R. § 300 et seq., as well
23 as the authority to ensure that the Work is performed in
24 accordance with all applicable statutes, regulations, and this
25 Decree. If the EPA On-Scene-Coordinator and the EPA Project
26 Coordinator are two different individuals, EPA will make its best
27 efforts to coordinate any direction given to the Work Defendants
28 by the On-Scene-Coordinator and the EPA Project Coordinator.

1 The EPA Project Coordinator or On-Scene-Coordinator

2 shall also have the authority to require a cessation of the
3 performance of the Work or any other activity at the Site, if EPA
4 determines that the Work or such activity may present or
5 contribute to an endangerment to public health, welfare, or the
6 environment or cause or threaten to cause the release of
7 hazardous substances from the Site. In the event the EPA Project
8 Coordinator or On-Scene-Coordinator takes any action which
9 results in the delay of the Work or any other activity required
10 by this Decree, the Parties may if necessary extend the
11 compliance schedule of this Decree for only that amount of time
12 which EPA determines is necessitated by the event. Should the
13 Work Defendants desire to extend the compliance schedule pursuant
14 to this Section, the Work Defendants shall propose an extension
15 and the EPA shall determine the length of any extension. If the
16 EPA Project Coordinator takes any action which results in the
17 delay of the Work or any other activity required by this Decree
18 for any of the reasons set forth in this Paragraph and those
19 reasons are due to the acts or omissions of the Work Defendants
20 or the Contractor(s), then any extension of the compliance
21 schedule shall be at EPA's discretion. The absence of the EPA
22 Project Coordinator from the Site shall not be cause for stoppage
23 of the work.

24
25 B. Work Defendants' Project Coordinator shall be
26 responsible for directing the day-to-day activities of Work
27 Defendants and Work Defendants' contractors in the performance of
28 the Work. The Work Defendants' Project Coordinator may assign

1 other representatives, including other contractors, to serve as a
2 site representative for oversight of performance of daily
3 operations during remedial activities.

4
5 C. Prior to invoking formal Dispute Resolution procedures,
6 any unresolved disputes arising between the EPA site
7 representatives and the Work Defendants or their contractors
8 shall be referred to the EPA and Work Defendants' Project
9 Coordinators.

11 XIV. SITE ACCESS

12
13 A. To the extent that the Site or other areas where Work is
14 to be performed is presently owned or controlled by parties other
15 than those bound by this Decree or to the extent that access to
16 or easements over property is required for the proper and
17 complete performance of this Decree, the Work Defendants shall
18 use their good faith efforts to obtain access agreements from the
19 present owners or those persons who have control over the
20 property, including lessees. Site access agreements shall
21 provide reasonable access to the Defendants, the Work Defendants'
22 contractor(s), the United States on behalf of EPA and USACE, the
23 State and local agencies, and their authorized representatives.
24 In the event that Work Defendants are unable to obtain necessary
25 access agreements sixty (60) days in advance of the need for such
26 access, Work Defendants shall notify Plaintiffs regarding the
27 lack of and the efforts to obtain such agreements. If Work
28 Defendants fail to gain access within sixty (60) days, they shall

1 continue to use good faith efforts to obtain access. If the
2 Plaintiffs and Work Defendants, through continued joint or
3 individual efforts, are unable to obtain such access, or suitable
4 alternative access, a force majeure event shall be deemed to have
5 occurred, and the affected work shall be modified, if necessary
6 by mutual agreement of the Work Defendants and Plaintiffs, to
7 take into account the lack of such access.

8
9 To the extent that EPA has control over access to portions
10 of the OII Site, and in light of the fact that EPA intends to
11 continue to provide site security and control access to portions
12 of the Site, EPA agrees to provide reasonable access to those
13 technical representatives of Work Defendants required to carry
14 out the field work detailed in this Decree. Within seven (7)
15 days of the effective date of this Decree, Work Defendants shall
16 provide the EPA Project Coordinator with a list of necessary
17 personnel and their company affiliations, to be added to the list
18 of persons who shall be provided access to the Site. This list
19 can be amended as necessary. Upon request, EPA will provide
20 access to other representatives of Defendants, as is necessary
21 and appropriate.

22
23 B. The EPA, the USACE, the State, and their
24 representatives, including contractors, reserve all rights under
25 Section 104 of CERCLA and, during the effective period of this
26 Decree, shall have access at all times to the Site and, during
27 reasonable times with reasonable notice, to any contiguous

28 ///

1 property owned or controlled by any Defendant, for activities,
2 including but not limited to:

- 3
- 4 1. Monitoring the progress of activities taking place;
- 5
- 6 2. Verifying any data or information submitted to EPA;
- 7
- 8 3. Conducting investigations relating to contamination
- 9 at and near the Site;
- 10
- 11 4. Obtaining samples at the Site.
- 12

13 As to activities relating to the Site, the EPA, the USACE,
14 the State, and their representatives shall also have access for
15 the purposes of inspecting and copying records, operating logs,
16 contracts, or other documents as specified in Section XVI (Data
17 Exchange).

18
19 Any person obtaining access to the Site pursuant to this
20 provision shall comply with all applicable provisions of the Work
21 Defendants' worker health and safety plan as submitted pursuant
22 to Section XI (Worker Health and Safety Plan) and Appendix C of
23 this Decree.

24
25 **XV. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS**

26
27 All actions required to be taken by any Party pursuant to
28 this Decree shall be undertaken in accordance with the

1 requirements of all applicable federal, state, and local laws,
2 and regulations, including the MCP. Work Defendants shall
3 obtain, or cause their contractors to obtain, except as provided
4 in Section 121(e)(1) of CERCLA, all permits and approvals
5 necessary under such laws and regulations.

6
7 **XVI. DATA EXCHANGE**

8
9 A. The Defendants shall make the results of all sampling
10 and/or tests or other data generated by the Defendants, or on the
11 Defendants' behalf, with respect to the implementation of this
12 Decree available to EPA in accordance with the provisions of this
13 Decree. EPA will make available to the Work Defendants the
14 results of sampling and/or tests or other data similarly
15 generated by EPA.

16
17 B. Under the provisions of Section 104(e) of CERCLA, EPA
18 and the State explicitly reserve the right to observe the Work of
19 the Work Defendants as it is performed. In addition, at the
20 request of EPA or the State, the Work Defendants shall allow
21 split or replicate samples to be taken by EPA or the State and/or
22 their authorized representatives, of any samples collected by the
23 Work Defendants or any one acting on the Work Defendants' behalf
24 pursuant to the implementation of this Decree. To the extent
25 practicable, any such observation and sample collection shall be
26 coordinated through the EPA Project Coordinator. At the request
27 of Work Defendants, Plaintiffs and/or their authorized
28 representatives shall allow Work Defendants to split or replicate

1 any samples collected by Plaintiffs and/or their authorized
2 representatives.

3
4 C. The Party performing sampling for the purposes of
5 implementing this Decree shall notify the other Parties as soon
6 as possible but no less than seven (7) days in advance of any
7 sample collection activity, and the party desiring to take split
8 samples shall inform the other party at least three (3) days
9 prior to the scheduled sampling event. The Party performing the
10 the sampling activity shall inform the other Parties at least
11 twenty-four (24) hours in advance if the planned sampling
12 schedule cannot be met. Notwithstanding the foregoing, within
13 seven (7) days after the approval of any sampling plan (including
14 the schedule for implementation), Work Defendants shall notify
15 Plaintiffs of the intended date of commencement of the sampling
16 activity. EPA shall be notified thirty (30) days prior to the
17 disposal of any such samples, and EPA shall have an opportunity
18 to take possession of all or a portion of such samples.

19
20 D. The Work Defendants need not provide EPA with seven (7)
21 day notice of routine sampling relating to the operation of the
22 treatment system; however, the Work Defendants shall provide EPA
23 with a schedule for all routine sampling. The Work Defendants
24 shall notify EPA seven (7) days in advance of any changes in the
25 routine sampling schedule. The Work Defendants need not provide
26 EPA with advance notice of changes in the treatment system
27 routine sampling as a result of unexpected conditions. The Work
28 Defendants shall, however, notify EPA within forty-eight (48)

1 hours of such occurrence and shall provide EPA with the results
2 of analysis of such sampling when the results become available.

3
4 E. Plaintiffs and Defendants agree to exchange technical
5 data and information relating to environmental and public health
6 issues, site conditions, site use and history, and regional
7 environmental conditions relating to the performance of the Work
8 or which would be covered by the provisions of Section 104 of
9 CERCLA, as such data and information becomes available, including
10 but not limited to:

11
12 1. Raw analytical, monitoring, sampling, geographical,
13 hydrogeological, geologic, meteorological, surface
14 water, landfill gas, subsurface gas, or ambient air
15 data, resulting from any environmental testing relating
16 to the OII Site;

17
18 2. Technical working drafts and final reports, letter
19 reports, work plans, documents, memoranda, status
20 reports, and written material, any of which are
21 developed using data generated by the Work Defendants
22 as part of the implementation of this Decree or
23 generated by Plaintiffs relating to the OII Site;

24
25 3. All technical maps, computer generated graphics,
26 charts, tables, data sheets, geologic cross-sections,
27 lithologic logs, graphs, photographs, slides, or

28 ///

1 other such material developed relating to the OII
2 Site; and
3

4 4. Computerized compilations of technical data and
5 information relating to the OII Site, including
6 the display and organization of data bases.
7

8 Summaries and tabulations of laboratory data may be reviewed for
9 clerical and gross laboratory handling errors prior to submission
10 pursuant to this Paragraph.
11

12 F. The Parties shall provide notice in a timely manner of
13 any project which is likely to produce data or information
14 subject to this Section.
15

16 G. Defendants recognize that the data and reports generated
17 under this Decree are not subject to the protection of
18 Section 1905 of Title 18 and 40 C.F.R. Part 2 as confidential
19 information. Moreover, the Parties explicitly recognize that the
20 provisions of Section 104(a)(7)(F) of CERCLA apply to data and
21 information generated by the Defendants. The Work Defendants
22 shall not assert a claim of confidentiality regarding any
23 hydrogeological or chemical data, or any data submitted in
24 support of the Work. Defendants reserve their rights to assert a
25 confidentiality claim for all other information pursuant to
26 Section 1905, Title 18 and 40 C.F.R. Part 2, and any applicable
27 state laws and regulations. The provisions of this Section shall
28 not constitute a waiver of any applicable claims of attorney work

1 product or attorney client privilege. In addition, the United
2 States reserves all its rights with regard to information
3 otherwise not subject to disclosure under applicable law. The
4 State is not obligated to provide any materials pursuant to this
5 Section which are subject to applicable attorney work product
6 claims, attorney-client privilege, or which the State is not
7 required to disclose under California Government Code Section
8 6254, except that Section 6254(b) shall not apply to the extent
9 that the State has made requested materials available to parties
10 to any pending litigation.
11

12 H. All data, factual information, and documents submitted
13 by the Defendants to EPA and the State pursuant to this Decree
14 and determined by EPA or the State, as appropriate, not to be
15 confidential shall be subject to public inspection.
16

17 I. If any of the Cash Defendants wish to perform any
18 sampling activity on or contiguous to the Site, they shall first
19 provide notice to the Project Coordinators and obtain permission
20 from EPA and the contiguous property owner if such owner is a
21 Defendant. In such an event, the provisions of this Section
22 shall apply to that Cash Defendant.
23

24 J. Subject to Paragraph G above, any Cash Defendant shall,
25 at its request in writing, have access to all data, factual
26 information and documentation generated under this Decree or
27 described in Section IX (Work to be Performed) and Appendix C.
28 The cost of copying shall be borne by the Cash Defendant. Any

1 such data, factual information or documents obtained by any Cash
2 Defendant shall be subject to the provisions of this Section.
3

4 **XVII. RETENTION OF RECORDS**
5

6 The Defendants shall preserve and retain all records and
7 documents now in their possession or control or in the possession
8 or control of their divisions, employees, agents, accountants,
9 contractors or attorneys which relate to the performance of the
10 Work or which would be covered by the provisions of Section 104
11 of CERCLA, regardless of any document retention policy to the
12 contrary, during the pendency of this Decree and for six (6)
13 years after its termination.
14

15 Until this six (6) year period expires, the Defendants shall
16 preserve, and shall instruct all contractors, all contractor's
17 subcontractors, and anyone else acting on the Defendants' behalf
18 at the OII Site to preserve (in the form of originals or exact
19 copies, or in the alternative, microfiche of all originals) all
20 records, documents and information specified above. During this
21 six (6) year period following the termination of this Decree, if
22 requested by EPA or the State, originals or copies of all such
23 records, documents, and information shall be delivered to the EPA
24 and the State Project Coordinators or designees, as appropriate.
25 After this six (6) year period, the Defendants shall notify the
26 EPA and the State no later than sixty (60) calendar days prior to
27 the destruction of any such documents. Upon request by EPA or
28 the State made within thirty (30) days of such notice, the

1 Defendant proposing to destroy records shall make available to
2 the EPA or the State, as appropriate, originals or copies of any
3 such records prior to their destruction. The United States and
4 Defendants are not obligated to provide any materials pursuant to
5 this Section which are subject to applicable attorney work
6 product claims or attorney-client privilege, or both. In
7 addition, the United States reserves all its right with regard to
8 information otherwise not subject to disclosure under applicable
9 law.
10

11 EPA shall preserve and retain all records and documents now
12 in their possession or control or in the possession or control of
13 their divisions, employees, agents, accountants, contractors or
14 attorneys which relate to any field activities at the OII Site
15 performed by EPA, are received under the provisions of
16 Section 104 of CERCLA, or which relate to the performance of the
17 Work under this Decree, as required by the EPA Office of
18 Information Resources Management Document Number 2160, entitled
19 Records Management Manual and the corresponding EPA Records
20 Management Manual, Appendix B, Records Control Schedules.
21

22 The State shall preserve and retain all records and
23 documents now in its possession or control or in the possession
24 or control of its divisions, employees, agents, accountants,
25 contractors or attorneys which relate to the performance of the
26 Work under this Decree or which relate to activities performed or
27 investigations, or enforcement actions taken by the State at the
28 OII Site regardless of any documents retention policy to the

1 contrary, during the pendency of this Decree and for six (6)
2 years after its termination. After such six (6) year period, the
3 State shall notify the Defendants no later than sixty (60)
4 calendar days prior to the destruction of any such documents.
5 Upon request by any Defendant made within thirty (30) days of
6 such notice, the State shall make available to the requesting
7 Defendant originals or copies of any such records prior to their
8 destruction. The State is not obligated to provide any materials
9 pursuant to this Section which are subject to applicable attorney
10 work product claims, attorney-client privilege, or which the
11 State is not required to disclose under California Government
12 Code Section 6254, except that Section 6254(b) shall not apply to
13 the extent that the State has made requested materials available
14 to parties to any pending litigation.

15
16 This Section shall not apply to exact duplicates.

17
18 XVIII. RESERVATION OF RIGHTS

19
20 A. Nothing in this Decree shall constitute or be construed
21 as a covenant not to sue with respect to, or a release from any
22 claim, cause of action, or demand in law or equity, which the
23 Parties may have against any person, as defined in
24 Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) or California
25 Health and Safety Code § 25319, not a signatory to this Decree.

26
27 B. Notwithstanding compliance with the terms of this
28 Decree, including the completion of EPA approved Work, the

1 Defendants are not released from liability for any matters beyond
2 the terms of this Decree. For matters beyond the terms of this
3 Decree, the United States, EPA and the State reserve the right to
4 take any enforcement action pursuant to CERCLA and/or any other
5 authority, including the right to seek response costs, injunctive
6 relief, monetary penalties, and punitive damages.

7
8 C. Notwithstanding any other provision in this Decree, the
9 Covenant Not to Sue, as provided in Section XXX (Covenant Not to
10 Sue), shall not relieve any Defendant of its obligation to meet
11 and maintain compliance with the requirements set forth in this
12 Decree. The United States, EPA and the State reserve all rights
13 to take enforcement actions for violations of this Decree.

14
15 D. In the event EPA determines that the Work Defendants
16 have failed to implement any provisions of the Work in an
17 adequate or timely manner, or in the event of an imminent or
18 substantial endangerment to the public health or welfare or the
19 environment, EPA may perform any and all portions of the Work as
20 it determines may be necessary, subject to the reimbursement
21 provisions of Paragraphs A and B of Section XIX (Reimbursement of
22 Future Response and Oversight Costs). If the EPA decides to
23 perform work which is the subject of this Decree, the EPA will
24 provide the Work Defendants' and the State's Project Coordinator
25 with advance notice thereof and, to the extent practicable, the
26 opportunity for consultation regarding EPA's intention to perform
27 a portion of or all of the Work. EPA and the State may agree

28 ///

1 that the State may perform work pursuant to the provisions of
2 this Paragraph.

3

4 E. Nothing in this Decree shall be deemed to limit the
5 response authority of EPA under Section 104 of CERCLA, 42 U.S.C.
6 § 9604, and under Section 106 of CERCLA, 42 U.S.C. § 9606, or
7 under any other federal response authority, except to the extent
8 that Defendants have a Covenant Not to Sue for Covered Matters
9 under Section XXX (Covenant Not to Sue). Nothing in this Decree
10 shall be deemed to limit the response authority of the State
11 under Section 25358.3 of the California Health and Safety Code or
12 under any other response authority, except to the extent that
13 Defendants have a Covenant Not to Sue for Covered Matters under
14 Section XXX (Covenant Not to Sue).

15

16 F. Except as provided in Section I (Jurisdiction),
17 Section IV (Binding Effect) and Section XXXVII (Claims Against
18 the Fund), Defendants expressly reserve all legal and equitable
19 rights and defenses that they may have under this Decree, CERCLA,
20 or any other legal authority, including all arguments concerning
21 compliance with the specific tasks and requirements of this
22 Decree. Except as provided in this Decree and Section 113(f)(2)
23 of CERCLA, this reservation of rights applies to all claims,
24 actions and defenses of Defendants against non-settlers, the
25 United States, the State of California, EPA or any others and to
26 those assertable between and among the individual Defendants.
27 Except as provided in Section XXVIII (Defendants' Right of
28 Contribution and Indemnity and Covenant Not to Sue Each Other)

1 and Section XXXVII (Claims Against the Fund), or otherwise in
2 this Decree, these rights include, but are not limited to, the
3 right to seek reimbursement for response actions taken and
4 response costs paid by any of the Defendants at any time.

5

6 G. Defendants reserve any and all rights of contribution
7 from any or all persons who are not Defendants as defined herein
8 for all costs incurred by Defendants under this Decree or
9 otherwise complying with the requirements of this Decree.
10 Nothing in this Decree shall be construed as limiting Defendants'
11 right to seek contribution from any or all liable persons who are
12 not Defendants.

13

14 H. In reaching this settlement, the Parties looked to a
15 calculation which did not specifically address individual
16 defenses or hazardous substances deposited by persons not parties
17 to this Decree. Rather, the Parties have allocated costs in a
18 general fashion reflective both of the volumes of wastes
19 deposited at the Site by the Defendants and of the nature of each
20 Defendant's participation in this Decree. If an allocation is
21 performed at the time a final remedy has been chosen, for the
22 purpose of resolving any liability remaining at that time, and if
23 it is determined that a Defendant's relative share of liability
24 (expressed as a percentage) is less than what was calculated for
25 the purposes of this settlement, as reflected in Attachment C,
26 the payment otherwise required in the resolution of final site
27 liability should be reduced by an amount corresponding to the
28 Percentage Reduction of a Defendant's relative share of liability

1 times either the amount paid by a Cash Defendant, or the amount
2 paid and the value of Work performed in accordance and in full
3 compliance with this Decree, by a Work Defendant in this
4 settlement. The Percentage Reduction should be determined by
5 dividing a Defendant's reduction in relative share of liability
6 determined by an allocation made, if any, at the time of final
7 settlement by that Defendant's relative share of liability among
8 Defendants as reflected in Attachment C.

9
10 For purposes of this Paragraph H, the value of Work
11 performed for each Work Defendant shall be the greater of the
12 value of all costs incurred consistent with the NCP (excluding
13 penalties) in performing the Work pursuant to this Decree, or an
14 amount equal to \$11,500 per 0.01% for the volume indicated for
15 that Work Defendant in Attachment C. Notwithstanding the above,
16 it is intended that any reallocation to "non-noticed PRPs"
17 resulting from the application of any credit pursuant to this
18 Paragraph H shall be based upon the amount of the credit which is
19 reflected by the payments made by the Cash Defendants and the
20 amount paid and the actual costs to the Work Defendants in
21 performing the Work consistent with the NCP (excluding
22 penalties). "Non-noticed PRPs" shall mean any potentially
23 responsible party under Section 107(a) of CERCLA which has not
24 been notified by EPA of its status as a potentially responsible
25 party at the OII Site as of the effective date of this Decree.

26
27 The Parties agree that this credit provision will not apply
28 if the use of the credit would result in the United States or the

1 State of California not recovering their total costs for the
2 final Site remedy. The Parties further agree that this provision
3 shall not be construed as any restriction of joint and several
4 liability under CERCLA, nor shall it be construed as any
5 commitment on the part of the United States to use the Hazardous
6 Substance Superfund to pay for any portion of the cost of the
7 final remedy or any other response activities. In addition, this
8 Paragraph H shall not restrict, in any way, the United States' or
9 EPA's or the State's ability to recover those costs not recovered
10 under this Decree from the appropriate persons potentially liable
11 under Section 107 of CERCLA. In the event that the United States
12 or the State reach a settlement with some or all of the
13 appropriate potentially responsible persons under Section 107 of
14 CERCLA regarding their ultimate liability for costs incurred or
15 work to be performed at the OII Site on any terms, this Paragraph
16 H shall not be the basis for an objection to such settlement or a
17 motion for entry of any future Consent Decree by any signatory to
18 this Decree.

19
20 I. In no case shall any Defendant be entitled to a refund
21 or to assert a claim against the Superfund under
22 Sections 106(b)(2) or 112 of CERCLA for any amount paid, or
23 expended, under this Decree even if that Defendant is later
24 determined, based upon its assertion of defenses in a subsequent
25 proceeding, to be not liable for response costs for the Site or
26 to be liable for response costs less than those paid, or
27 expended, pursuant to this Decree.

28 ///

1 J. Nothing in this Section shall limit any Defendant's
2 right to a Covenant Not to Sue under Section XXX (Covenant Not to
3 Sue) or Contribution Protection under Section XXIX (Contribution
4 Protection) for all Covered Matters.
5

6 XIX. REIMBURSEMENT OF FUTURE RESPONSE AND OVERSIGHT COSTS
7

8 A. The Work Defendants shall reimburse EPA's Hazardous
9 Substance Superfund or the State for the costs incurred for any
10 activities outlined in Section IX (Work to be Performed) which
11 are performed by EPA or the State, pursuant to the provisions
12 Paragraph D of Section XVIII (Reservation of Rights). These costs
13 shall be subject to the funding limitations of Paragraph C of
14 Section IX (Work to be Performed). The Work Defendants shall,
15 within thirty (30) calendar days of receipt of demand for
16 payment, remit a check for the amount of those costs made payable
17 to the Hazardous Substance Superfund, or the Department of Health
18 Services, as appropriate.
19

20 B. Reimbursement under this Section shall also be required
21 in the event that EPA determines that Work Defendants have failed
22 to perform any material portion of the Work or have performed any
23 portion of the Work in a substantially inadequate or
24 substantially untimely manner, or in the event of an imminent and
25 substantial endangerment to public health or welfare or the
26 environment resulting from the performance of, or failure to
27 perform, Work by the Work Defendants. If EPA or the State
28 assumes performance of any portion of the Work based on such a

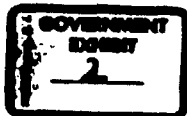
1 determination, the Work Defendants shall, within thirty (30)
2 calendar days of receipt of demand for payment, remit a check for
3 the amount of those costs made payable to the Hazardous Substance
4 Superfund or the DHS, as appropriate. In such an event, the
5 funding limitations of Paragraph C of Section IX (Work to be
6 Performed) shall not apply.
7

8 C. Defendants shall reimburse the Hazardous Substance
9 Superfund for the costs incurred by EPA to oversee and review the
10 work under this Decree. These payments shall be made in the
11 amounts set forth and as described in Paragraph B of Section X
12 (Escrow Account), Section VIII (Payments by Cash Defendants) and
13 Attachment A to this Decree.
14

15 D. Any payment made pursuant to this Section shall not
16 constitute an admission by Defendants of any liability to EPA,
17 the State or any other person or agency. The checks shall
18 reference the OII Site, and be addressed to:
19

20 U.S. Environmental Protection Agency - Region 9
21 Attn: Superfund Accounting
22 P.O. Box 360863M
23 Pittsburgh, PA 15251
24
25
26
27
28

24 ///
25 ///
26 ///
27 ///
28 ///



1 or, as appropriate:

2
3 California Department of Health Services
4 Toxics Substances Control Division
5 P.O. Box 942732
6 Sacramento, CA 94234-7320
7

8 A copy of the transmittal letter and a copy of the check
9 shall be sent to the EPA or State Project Coordinator, as
10 appropriate.
11

12 **XX. REIMBURSEMENT OF PAST COSTS**
13

14 A. Defendants agree to reimburse the Hazardous Substance
15 Superfund for certain past response costs which have been
16 incurred by EPA in responding to the conditions at the OII Site,
17 including costs for emergency response actions which have been
18 taken at the OII Site, remedial investigation activities
19 performed by EPA and its contractor, and site control and
20 monitoring activities. EPA will provide Defendants with a copy
21 of the appropriate SPUR (Software Package for Unique Reports,
22 EPA's Superfund accounting system document) which provides an
23 accounting of its costs for the period up to and including
24 June 1, 1988. EPA will also provide a summary accounting of its
25 indirect and interest cost calculations. These reimbursements
26 shall be made in the amounts set forth and as described in
27 Section VIII (Payments by Cash Defendants), Section X (Escrow
28 Account) and Attachment A to this Decree. Work Defendants shall

1 pay \$1,400,000 in EPA past response costs, as provided for in
2 Section X (Escrow Account). A copy of all transmittal letters
3 and a copy of all checks shall be sent to the EPA Project
4 Coordinator.
5

6 B. Defendants agree to reimburse the State of California
7 Hazardous Substance Account for certain past response costs which
8 have been incurred by the State in responding to conditions at
9 the OII Site. The State will provide the Defendants an
10 accounting of its costs for the period up to and including
11 June 1, 1988. These payments shall be made in the amounts set
12 forth as described in Section VIII (Payments by Cash Defendants),
13 Section X (Escrow Account) and Attachment A to this Decree. Work
14 Defendants shall pay \$500,000 in past response costs, as provided
15 for in Section X (Escrow Account). A copy of the transmittal
16 letter and a copy of the check shall be sent to the State Project
17 Coordinator.
18

19 C. Such payments by Defendants to the EPA and the State as
20 provided in Paragraphs A and B above, are not a penalty, fine or
21 monetary sanction of any kind.
22

23 **XXI. PRIORITY OF CLAIMS**
24

25 In any contribution action, the rights of any Defendant
26 shall be subordinate to the rights of the United States or the
27 State, pursuant to the provisions of Section 113(f)(3)(C) of
28 CERCLA.

1 XXII. STIPULATED PENALTIES

2
3 A. General Provisions

4
5 1. Stipulated penalties shall apply for untimely or
6 inadequate submittals or Work required under the terms of this
7 Decree except where due to the occurrence of a force majeure
8 event, pursuant to Section XXIII (Force Majeure). Penalties
9 shall apply from the first day after the deadline for performance
10 of a requirement of this Decree until the requirement is
11 satisfied.

12
13 2. For inadequate submittals or Work, EPA shall provide to
14 Defendants, as soon as possible, oral notification of the
15 occurrence of an event which triggers stipulated penalties, with
16 written confirmation within seven (7) days of the occurrence of
17 that event. In the event that EPA fails to so notify Defendants,
18 stipulated penalties shall accrue from the date on which
19 Defendants receive such notice.

20
21 3. Stipulated penalties under this Paragraph shall be paid
22 upon demand, by certified check made payable to the Hazardous
23 Substance Superfund, and addressed as indicated in Section XIX
24 (Reimbursement of Future Response and Oversight Costs) and shall
25 be paid within thirty (30) days of receipt of the demand for
26 payment of stipulated penalties. Failure to pay a stipulated
27 penalty on time shall also constitute such an event subject to
28 stipulated penalties. A copy of the check and the letter

1 forwarding the check, including a brief description of the
2 triggering event, shall be submitted to the United States in
3 accordance with Section XXV (Form of Notice), herein.

4
5 4. Notwithstanding the stipulated penalties provisions of
6 this Section, and to the extent authorized by law, EPA or the
7 State may elect to assess civil penalties or bring an action in
8 District Court to enforce the provisions of this Decree. Payment
9 of stipulated penalties shall not preclude EPA or the State from
10 electing to pursue any other remedy or sanction to enforce this
11 Decree, and nothing shall preclude EPA or the State from seeking
12 statutory penalties against the Work Defendants for violations of
13 statutory or regulatory requirements relating to the performance
14 of the Work under this Decree, provided that the total shall not
15 exceed \$25,000 per day per violation.

16
17 5. In the event the EPA or the State assumes the
18 performance of a portion or all of the Work, pursuant to
19 Section XVIII (Reservation of Rights), the Work Defendants would
20 be liable for stipulated penalties pursuant to this Section. As
21 provided for in Paragraphs A and B of Section XIX (Reimbursement
22 of Future Response and Oversight Costs), if EPA or the State
23 performs all or portions of the Work because of the Work
24 Defendants' failure to comply with their obligations under this
25 Decree, the Work Defendants shall reimburse the EPA or the State
26 for the costs of doing such work within thirty (30) days of
27 receipt of demand for payment of such costs, plus penalties,
28 pursuant to Paragraphs C or D of this Section, as applicable.

1 6. The Work Defendants are jointly and severally liable for
2 any stipulated penalties pursuant to the provisions of this
3 Section provided, however, that the total amount due and payable
4 for each day of each violation shall not exceed those limits
5 specified in this Section.

6
7 7. Work Defendants may invoke the dispute resolution
8 procedures set forth in Section XXIV (Dispute Resolution) in any
9 case that results in stipulated penalties based on a
10 determination of inadequacy including any determination of
11 inadequacy by EPA pursuant to Paragraph D of Section XVIII
12 (Reservation of Rights). Invoking the dispute resolution process
13 shall not toll or suspend the accrual of stipulated penalties,
14 subject to the provisions of Section XXIV (Dispute Resolution).

15
16 B. Monthly Progress Reports
17

18 1. The Work Defendants shall provide written monthly
19 progress reports to EPA as described in Appendix C. These
20 monthly progress reports shall describe all actions taken to
21 comply with this Decree during this reporting period, including a
22 general description of Work commenced or completed during the
23 reporting period, Work projected to be commenced or completed
24 during the next reporting period, any problems that have been
25 encountered or are anticipated by the Work Defendants in
26 commencing or completing the Work, and shall also include the
27 monthly statements for the Escrow Accounts as described in
28 Paragraph F of Section X (Escrow Account). These monthly

1 progress reports shall be submitted to EPA by the
2 fourteenth (14th) day of each month, and should cover the work
3 done the preceding calendar month and planned for the current
4 calendar month.

5
6 2. If a submitted monthly progress report is inadequate, or
7 if the Work Defendants fail to submit any monthly progress report
8 in accordance with the schedule set forth above, then the Work
9 Defendants shall be considered to be in violation of this Decree
10 and subject to stipulated penalties as governed by this Section.

11
12 3. The Work Defendants shall pay stipulated penalties of
13 \$1,000 per day for the submission of inadequate or late monthly
14 progress reports as called for in this Section.

15
16 C. Work to be Performed and All Other Deliverables
17

18 1. Any reports, plans, specifications (including discharge
19 or emission limits), schedules, appendices, and attachments
20 required by this Decree are, upon approval by EPA, incorporated
21 into this Decree. Any noncompliance with such EPA approved
22 reports, plans, specifications (including discharge or emission
23 limits), schedules, appendices, and attachments shall be
24 considered a failure to comply with this Decree and subject to
25 stipulated penalties as governed by this Section. In the event
26 Work Defendants exceed discharge or emission limits, stipulated
27 penalties shall apply under this Section. EPA may, however, in
28 its sole discretion, determine it is appropriate to forgive or

1 reduce stipulated penalties assessed by EPA under this Decree
2 solely for such exceedences. If Work Defendants pay penalties
3 assessed by a state or local agency for such an exceedance, the
4 amount of such penalties paid will be credited toward any
5 penalties assessed by EPA for the same instance of exceedance.

6
7 2. If EPA disapproves any Work, plans, reports (other than
8 monthly progress reports, which are covered by Paragraph B
9 above), or other items required to be submitted to EPA for
10 approval pursuant to Section IX (Work to be Performed),
11 Section XII (Quality Assurance/Quality Control), or Section X
12 (Escrow Account), the Work Defendants shall have ten 10 days from
13 the receipt of such disapproval to correct any inadequacies and
14 resubmit the plan, report, or item for EPA approval unless a
15 longer period of time is provided by Subparagraph A(12) of
16 Section IX (Work to be Performed) with respect to Work. This
17 Subparagraph C(2) does not apply to Project Proposals, as
18 described in Appendix C.

19
20 3. Any disapprovals by EPA shall include an explanation of
21 why the Work, plan, report, or item is being disapproved.

22
23 4. The Work Defendants must address each of EPA's comments
24 and resubmit to EPA the previously disapproved plan, report, or
25 item with any required changes within the deadline set forth
26 herein.

27 ///

28 ///

1 5. If any plan, report, or item is inadequate after
2 resubmission, then the Work Defendants shall be deemed to be in
3 violation of this Decree and subject to stipulated penalties as
4 governed by this Section.

5
6 6. Except for the stipulated penalties specified in
7 Paragraph B, above, the Work Defendants shall pay the following
8 stipulated penalties for each failure to comply with the
9 requirements of this Decree, including but not limited to all
10 implementation schedules and performance and submission dates:

11
12 a. Class I Requirements

13
14 All Outlines
15 Preliminary Designs
16 Intermediate Designs
17 Preliminary Designs
18 All Construction Inspections
19 Draft Construction Close-out Reports
20 Emergency Repair Close-out Reports
21 Discharge or Emission Exceedences

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<u>Period of failure</u>	<u>Penalty per Day</u>
<u>to Comply</u>	<u>per Event</u>
1st through 30th day	\$2,500
If an Outline or Report is for a Class II Requirement:	
31st through 45th day	\$10,000
46th day and beyond	\$15,000
If a Design or Construction is for a Class II Requirement:	
31st through 45th day	\$5,000
46th day and beyond	\$15,000
If an Outline, Design, Construction, or Report is for a Class III Requirement:	
31st through 45th day	\$15,000
46th day and beyond	\$20,000
All other Class I Requirements:	
31st day and beyond	\$2,500
b. <u>Class II Requirements</u>	
All Prefinal Plans	
SCH/LMS Master Plan	
Operations Manual	
Transition Plan	
Project Proposal Plan	

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Bench Scale Testing Plan

LTS Predesign Report

Final Construction Close-out Reports

Quarterly Escrow Reports required by Section X (Escrow Account)

Work Completion Report

Final Designs (other than LTS Final Design)

Untimely Commencement of Work

Period of Failure

to Comply

1st though 15th day

16th through 30th day

31st through 45th day

46th day and beyond

Penalty per Day

per Event

\$3,000

\$7,000

\$10,000

\$15,000

c. Class III Requirements

Safety, Health, and Emergency Response Plan

Quality Assurance/Quality Control Plan

Interim Budget and Operations Plan

Final LTS Close-out Report

LTS Final Design

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<u>Period of Failure</u>	<u>Penalty per Day</u>
<u>to Comply</u>	<u>per Event</u>
1st through 15th day	\$5,000
16th through 30th day	\$10,000
31st through 45th day	\$15,000
46th day and beyond	\$20,000

d. All deliverables and Work not identified in Paragraph B or Subparagraph (6)(a) through (6)(c) of this Paragraph C shall be Class II Requirements.

D. Stipulated Penalties for Special Circumstances

1. If EPA determines that Work Defendants have suspended performance of all or a portion of the Work, unless otherwise allowed by the terms of this Decree, they shall be deemed to be in violation of this Decree and shall pay a stipulated penalty of \$3,000,000, in lieu of other stipulated penalties for that specific violation.

2. In the event that EPA determines that Work Defendants have failed to perform any material portion of the Work or have performed any portion of the Work in a substantially inadequate or substantially untimely manner, or in the event of an imminent and substantial endangerment to public health or welfare or the environment resulting from the performance of, or failure to perform, Work by Work Defendants, Work Defendants shall pay a

stipulated penalty of \$1,000,000, in lieu of other stipulated penalties for that specific violation.

3. The costs incurred by EPA resulting from an EPA determination under Subparagraphs 1 and 2 of this Paragraph D shall not be allocable against the funding limitations of Paragraph C of Section IX (Work to be Performed), as provided in Paragraph B of Section XIX (Reimbursement of Future Response and Oversight Costs).

E. Stipulated Penalties for Cash Defendants

Each Cash Defendant's obligation for payment of stipulated penalties shall be limited to its obligation to make payments pursuant to Section VIII (Payments by Cash Defendants), Section X (Escrow Account) and Attachment A to this Decree. The amount of the penalties for any untimely payment or payment of less than the full amount due under this Decree shall be \$25,000 per day. Payments shall be made in accordance with Paragraph A of this Section.

XXIII. FORCE MAJEURE

For purposes of this Decree, force majeure is defined as any event arising from causes beyond the control of the Work Defendants, or their contractors, subcontractors or consultants which delays or prevents the performance of any obligation under this Decree, and could not have been overcome or prevented by the

1 Work Defendants' due diligence efforts. The Work Defendants
2 shall have the burden of proving that the delay was caused by
3 circumstances beyond the control of the Work Defendants.

4
5 When circumstances are occurring or have occurred that delay
6 or may delay the completion of any phase of the Work, and the
7 Work Defendants wish to invoke the provisions of this Section,
8 the Work Defendants shall, as soon as possible, notify EPA's
9 Project Coordinator orally and shall, within seven (7) calendar
10 days of oral notification to EPA, notify the EPA and the State
11 Project Coordinators in writing of the anticipated length and
12 cause of the delay, and to the extent possible, the following:
13 which of the tasks are directly affected by the delay; the
14 measures taken and/or to be taken to prevent or minimize the
15 delay; and the timetable by which the Work Defendants intend to
16 implement these measures. Failure of the Work Defendants to
17 comply with the notice requirements of this Section shall
18 constitute a waiver of that claim of force majeure.

19
20 Force majeure shall not include increased costs or expenses
21 of any of the Work to be performed under this Decree, nor the
22 financial inability of any of the Work Defendants to perform such
23 Work, nor the failure of Work Defendants to make timely
24 application for any required permits or approvals, and to provide
25 all information required therefor in a timely manner. The EPA
26 shall determine whether the event constitutes force majeure.

27 ///

28 ///

1 If EPA determines that the event did not constitute force
2 majeure, and the delay was not beyond the control of the Work
3 Defendants, this delay shall constitute non-compliance with the
4 Decree, and penalties shall accrue from the time of
5 noncompliance. If the EPA determines the event does constitute
6 force majeure, it shall, in consultation with the Work
7 Defendants, determine the appropriate modification to the
8 schedules in the Plans. No deadline shall be extended beyond
9 that period of time which is necessary to complete the activities
10 with the least amount of delay possible. The Work Defendants
11 shall adopt all practicable measures to avoid or minimize delay.

12
13 If the EPA and the Work Defendants cannot agree as to
14 whether the reason for the delay was a force majeure event, the
15 determination of the EPA shall control. If the Work Defendants
16 dispute this determination, the dispute shall be resolved by the
17 procedures outlined in Section XXIV (Dispute Resolution) of this
18 Decree.

19
20 The Cash Defendants shall not invoke the provisions of this
21 Section.

22 XXIV. DISPUTE RESOLUTION

23
24
25 As required by Section 121(e)(2) of CERCLA, the United
26 States, EPA, the State and the Work Defendants shall attempt to
27 resolve expeditiously and informally any disagreements arising

28 ///

1 under or from the implementation of this Decree or any Work
2 required hereunder.

3
4 If a dispute arises with respect to the meaning or
5 application of this Decree, it shall in the first instance be the
6 subject of informal good faith negotiations between EPA and the
7 Work Defendants, pursuant to Paragraph B of this Section. The
8 State may participate in these negotiations, consistent with the
9 provisions of Paragraphs A and D of Section XXXIV (State and
10 Local Agency Participation). In the event that the parties
11 concerned cannot resolve any dispute arising under this Decree,
12 then the interpretation advanced by EPA shall be considered
13 binding unless the Work Defendants invoke the dispute resolution
14 provisions of this Section. The Work Defendants' decision to
15 invoke dispute resolution shall not constitute a force majeure
16 under Section XXIII (Force Majeure), herein. The Work Defendants
17 reserve the right to dispute a determination regarding whether a
18 force majeure has occurred.

19
20 A. Notice

21
22 If the Work Defendants raise a good faith objection to any
23 EPA notice of disapproval, determination of inadequacy, or other
24 decision made pursuant to this Decree, or if the Work Defendants
25 conclude that EPA and the Work Defendants have otherwise reached
26 an impasse with regard to the requirements of this Decree, the
27 Work Defendants shall orally notify EPA immediately of their
28 objections. The Work Defendants shall subsequently provide

1 written notice to EPA and the State within seven (7) calendar
2 days of oral notification.

3
4 B. Informal Resolution Mechanism

5
6 EPA and the Work Defendants shall then have fourteen (14)
7 additional calendar days from the receipt by either party of the
8 written notification to reach agreement. DHS may participate in
9 these negotiations, consistent with the provisions of Paragraphs
10 A and D of Section XXXIV (State and Local Agency Participation).
11 If possible, such disputes shall be resolved by informal
12 telephone conferences. Any Party may also request that the
13 Parties confer to resolve the dispute through an informal
14 conference, to be held within this fourteen (14) calendar day
15 period. As appropriate, and upon agreement of the EPA, the State
16 and the Work Defendants, they may use independent technical
17 experts to assist in the resolution of solely technical disputes,
18 provided however that there is no written finding or
19 determination made by such technical expert. No product or
20 recommendation resulting from this consultation shall be offered
21 in evidence for any purpose in any proceeding. The Work
22 Defendants agree to pay for such independent experts and any such
23 costs shall be excluded from the limitations on expenditures set
24 forth in Paragraph C of Section IX (Work to be Performed).

25
26 At the end of this fourteen (14) calendar day period, or
27 within seven (7) calendar days after an informal conference is
28 held, whichever is later, EPA shall provide the Work Defendants

1 and the State a written statement of its decision signed by the
2 Superfund Enforcement Branch Chief, or his/her designee other
3 than the Project Coordinator, and the Work Defendants shall
4 implement the directives contained in such decision, subject to
5 the provisions of Paragraph C of this Section. If the Work
6 Defendants refuse to implement such directives, EPA or the State
7 may elect to perform such work, pursuant to Section XVIII
8 (Reservation of Rights), infra. If Paragraph C of this Section
9 is invoked, Plaintiffs may also elect to perform the work
10 required by the disputed directive, as provided in Section XVIII
11 (Reservation of Rights), and subject to Paragraphs A or B of
12 Section XIX (Reimbursement of Future Response and Oversight
13 Costs) and Section XXII (Stipulated Penalties).

14
15 C. Judicial Resolution

16
17 In the event that the dispute cannot be resolved by the
18 informal negotiation procedures outlined in Paragraphs A and B
19 above, and should the Work Defendants choose not to follow the
20 EPA position, the Work Defendants may file with the Court a
21 petition which shall describe the nature of the dispute and
22 include a proposal for its resolution. Work Defendants may not
23 file such a petition until informal negotiations pursuant to
24 Paragraph B, supra, are completed. The filing of a petition
25 asking the Court to resolve a dispute shall not of itself extend
26 or postpone the Work Defendants' obligations under this Decree
27 with respect to the disputed issue, or stay the provisions of
28 Section XXII (Stipulated Penalties), except that the EPA will not

1 demand payment of penalties accrued until completion of the
2 dispute resolution process.

3
4 Unless the Court establishes a different period for
5 response, Plaintiffs shall have thirty (30) days to respond to
6 the petition. In a dispute where the Work Defendants allege
7 delay attributable to force majeure, the Work Defendants shall
8 have the burden of demonstrating by a preponderance of the
9 evidence that the delay or anticipated delay has been or will be
10 caused by circumstances beyond their control which could not have
11 been overcome by due diligence, that the duration of the delay is
12 or was warranted under the circumstances, and that the Work
13 Defendants complied with the notice requirements of Section XXIII
14 (Force Majeure). In proceedings on any dispute relating to the
15 selection, technique, cost effectiveness or adequacy of any
16 aspect of the Work and in any other dispute subject to CERCLA
17 Section 113(j)(2), 42 U.S.C. § 9613(j)(2), in considering the
18 Work Defendants' objections, the Court shall uphold EPA's
19 decision unless the Work Defendants can demonstrate, on the
20 administrative record, that EPA's decision was arbitrary and
21 capricious or otherwise not in accordance with law. In other
22 disputes, except as specified above, the appropriate standard of
23 judicial review and scope of materials to be considered by the
24 Court shall be determined by the Court. In any proceedings on a
25 dispute, Work Defendants shall bear the burden of coming forward
26 with evidence and of persuasion on factual issues.

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1 If the Court finds that the Work Defendants have not
2 satisfied their burden, the Work Defendants shall transmit
3 payment of all penalties which have accrued during the dispute,
4 plus interest at the rate specified in Section 107(a) of CERCLA,
5 to the Hazardous Substance Superfund, within fifteen (15) working
6 days of resolution of the dispute. The Work Defendants shall
7 then implement the disputed matter as resolved and perform the
8 work which was the subject of the dispute, if required. The
9 appropriate plans should be amended to reflect the resolution of
10 the dispute.

11
12 In any dispute in which the Work Defendants prevail: (1) the
13 deadlines for any affected deliverables shall be extended to
14 account fully for any delays attributable to the dispute
15 resolution procedures; and (2) any penalties which would
16 otherwise accrue for violation of any affected deliverable shall
17 be waived.

18
19 **XXV. FORM OF NOTICE**

20
21 All communications between the Work Defendants or their
22 Contractor(s), and EPA and the State made pursuant to this Decree
23 shall be sent to at least the Work Defendants, EPA, and the
24 State. Subject to Paragraph G of Section XVI (Data Exchange),
25 any Cash Defendant may obtain upon written request, a copy of any
26 or all such communications. The cost of copying any such
27 material shall be borne by the Cash Defendant making the request.
28 ///

1 When notification to or communication with the United
2 States, EPA, the Work Defendants, or the State is required by the
3 terms of this Decree, it shall be in writing, postage prepaid,
4 and addressed as follows:
5

6 **As to the United States:**

7
8 Chief
9 Environmental Enforcement Section
10 Land and Natural Resources Division
11 Department of Justice
12 10th and Pennsylvania Avenue, N.W.
13 Washington, D.C. 20530
14

15 **As to EPA:**

16
17 EPA Project Coordinator - OII Site
18 Superfund Enforcement Section (T-4-2)
19 U.S. Environmental Protection Agency
20 215 Fremont Street
21 San Francisco, CA 94105
22

23 Assistant Regional Counsel - OII Site
24 Office of Regional Counsel
25 U.S. Environmental Protection Agency
26 215 Fremont Street
27 San Francisco, CA 94105
28 ///

1 As to the Work Defendants:

2
3 Project Co-Chairmen
4 c/o Boone & Associates
5 Suite 204
6 901 Corporate Center Drive
7 Monterey Park, CA 91754

8
9 David A. Giannotti, Esq.
10 McKenna, Conner & Cuneo
11 444 South Flower Street
12 Los Angeles, CA 90071

13
14 J. Jeffrey Zimmerman, Esq.
15 Occidental Petroleum Corporation
16 1747 Pennsylvania Ave. N.W.
17 Washington, D.C. 20006

18
19 OII Work Defendant Project Coordinator
20 c/o Boone & Associates
21 Suite 204
22 901 Corporate Center Drive
23 Monterey Park, CA 91754

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25 ///
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PARTIAL CONSENT DECREE

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1 As to the State:

2
3 OII Project Coordinator
4 Department of Health Services
5 Toxic Substances Control Division
6 1405 San Fernando Road, Suite 300
7 Burbank, CA 91504

8
9 XXVI. MODIFICATION

10
11 Except as provided for in this Decree, there shall be no
12 modification of this Decree without written approval of EPA, the
13 State, the Defendants and the Court, or as ordered by the Court.

14
15 XXVII. ADMISSIBILITY OF DATA

16
17 For the purpose of this action only, the Parties waive any
18 evidentiary objection as to the authenticity of data gathered,
19 generated, or evaluated by any Party in the performance or
20 oversight of the Work under this Decree that has been verified
21 using the Quality Assurance and Quality Control procedures
22 specified in Section XII (Quality Assurance and Quality Control).

23
24 The Parties also waive any objections to the introduction of
25 such data based on hearsay for the purpose of this action only.

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PARTIAL CONSENT DECREE

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1 **XXVIII. DEFENDANTS' RIGHT OF CONTRIBUTION AND**
2 **INDEMNITY AND COVENANT NOT TO SUE EACH OTHER**

3
4 A. Each Defendant shall retain all rights under statutory or
5 common law to seek contribution or indemnification against any
6 and all other persons or entities not party to this Decree.
7

8 B. Except as provided in this Paragraph, to the extent that
9 any Defendant has complied with its obligations hereunder, and,
10 as among the Work Defendants only, with its obligations under any
11 separate agreement allocating the costs hereof, no rights as to
12 matters addressed in this Decree are retained against such
13 Defendant by any other Defendant and such rights are hereby
14 expressly waived, released and discharged with regard to such
15 Defendant. Each Cash Defendant specifically retains any and all
16 rights to seek indemnification from the Work Defendants as
17 provided in Paragraph B of Section XXXVI (Indemnification).
18

19 C. For and in consideration of the mutual covenants and
20 promises of the Defendants made herein and, as to the Work
21 Defendants only, in any separate agreement allocating the costs
22 hereof, each Defendant hereby covenants not to sue or otherwise
23 assert any claim against any other Defendant for reimbursement of
24 any payment made pursuant to this Decree, except to enforce any
25 allocation of costs made pursuant to such separate agreement.
26
27
28

1 **XXIX. CONTRIBUTION PROTECTION**

2
3 Pursuant to Sections 113(f)(2) and 122(h)(4) of CERCLA and
4 other applicable federal and state law, Defendants shall not be
5 liable to other per ons or entities for contribution claims
6 regarding Covered Matters. Nothing in this Section shall
7 constitute or be construed as releasing or providing any Covenant
8 Not to Sue or Contribution Protection with respect to Covered
9 Matters to any person not a Defendant or to any Defendant which
10 has defaulted on its obligations under this Decree. The United
11 States and the State expressly reserve the right to bring any
12 appropriate action against persons and entities not signatories
13 hereto to recover response costs incurred by the United States
14 and the State.
15

16 Each Cash Defendant's right to Contribution Protection under
17 this Section shall remain in effect against all other persons
18 provided it has not defaulted on any obligation under this
19 Decree, whether or not any other Defendant has fully performed
20 its obligations under this Decree. Each Work Defendant's right
21 to Contribution Protection under this Section shall remain in
22 effect against all other persons provided Work Defendants have
23 not defaulted on any obligation under this Decree and that such
24 Work Defendant has not defaulted on its obligations arising out
25 of this Decree, whether or not any or all Cash Defendants has
26 fully performed its obligations under this Decree.
27
28

1 XXX. COVENANT NOT TO SUE

2
3 A. Except as provided in Paragraph C, upon the approval by
4 EPA of the final Work Completion Report and certification of
5 completion of the Work, including operations, maintenance and
6 monitoring, the United States, EPA, the State, the California
7 Hazardous Substance Account, and the Attorney General of
8 California (with respect to the authority under California
9 Government Code §§ 12600 - 12612) covenant not to sue the Work
10 Defendants with regard to the Covered Matters which are performed
11 satisfactorily by Work Defendants. "Covered Matters" shall mean
12 those conditions which the alternatives selected in the RODs
13 (attached as Appendices A and B) are designed to remedy, the Work
14 implemented under Section IX (Work to be Performed), oversight
15 costs associated with the performance of that Work and for all
16 past response costs, including interest accrued thereon, incurred
17 by the United States, the State and the California Hazardous
18 Substance Account up to June 1, 1988. Covered Matters
19 specifically do not include removals, remedial actions which will
20 be implemented pursuant to the final remedy, the gas control and
21 any future operable unit(s), or any environmental condition which
22 is identified in the RI/FS (except to the extent those removals,
23 remedial actions, or those environmental conditions are already
24 covered by Appendices A or B or the Work). The Parties also
25 agree that remedial actions for groundwater contamination, if
26 any, are not Covered Matters under this Decree. This Section is
27 not, and shall not be construed as, a Covenant Not to Sue any
28 Work Defendant that does not fulfill its obligations arising out

1 of this Decree, or any other person or entity not a Party to this
2 Decree. Under the provisions of Section IV (Binding Effect),
3 Work Defendants shall be jointly and severally responsible for
4 the performance of the Work Defendants' obligations outlined in
5 this Decree; provided however, that their rights to a Covenant
6 Not to Sue under this Decree shall not be affected by the
7 performance or nonperformance of any obligation by any Cash
8 Defendant under this Decree.
9

10 B. Except as provided in Paragraph C, upon receipt of all
11 payments required of each Cash Defendant under this Decree, the
12 United States, the State, the California Hazardous Substance
13 Account, and the Attorney General of California (with respect to
14 the authority under California Government Code §§ 12600 - 12612)
15 covenant not to sue that Cash Defendant for Covered Matters. Any
16 Cash Defendant can obtain the full benefit of this Covenant Not
17 to Sue by prepayment, at any time, of the balance of the total
18 amount due under Attachment A, Schedule 2. This Covenant Not to
19 Sue shall remain in effect with respect to any Cash Defendant
20 whether or not any other Defendant fulfills its obligations under
21 this Decree.
22

23 C. Defendants are expressly not released from, and the
24 provisions of Paragraphs A and B of this Section shall not apply
25 to, any matter which is not a Covered Matter, including the
26 following claims:

27 ///

28 ///

1 1. Any claim based on a failure of any Defendant to meet
2 its obligations under this Decree;
3
4 2. Any other claims of the United States, the State, or the
5 California Hazardous Substance Account for any other costs or
6 actions necessary at the OII Site which are not covered pursuant
7 to the terms of this Decree;
8
9 3. Claims based on the Defendants' liability arising from
10 the past, present, or future disposal of hazardous substances not
11 associated with the OII Site at other disposal sites;
12
13 4. Any liability of Work Defendants for damage to federal
14 or state property located any place that the Work is being
15 performed;
16
17 5. Claims based on criminal liability;
18
19 6. Claims based on liability for damage to natural
20 resources as defined in CERCLA;
21
22 7. Claims based on liability for future monitoring or
23 oversight expenses incurred by the United States or the State
24 except as those expenses are Covered Matters; or
25
26 8. Liability on the part of the Work Defendants for any
27 violations of federal or state law which arises from
28 implementation of the Work.

1 D. The Defendants hereby release and covenant not to sue
2 the United States, including any and all departments, agencies,
3 officers, administrators, and representatives thereof, for any
4 claim, counter-claim, or cross-claim asserted, or that could have
5 been asserted prior to the effective date of this Decree arising
6 out of or relating to the OII Site, except for any liability
7 arising under Sections 107 or 113 of CERCLA relating to the OII
8 Site for any federal entity that has not resolved its liability
9 for Covered Matters under the provisions of this Decree or its
10 equivalent. Defendants also release and covenant not to sue the
11 State, including any and all officers, administrators, and
12 representatives thereof, for any claim, counter-claim, or
13 cross-claim asserted, or that could have been asserted prior to
14 the effective date of this Decree arising out of or relating to
15 the OII Site.
16

17 E. Nothing in this Decree shall constitute or be construed
18 as a release or a covenant not to sue regarding any claim or
19 cause of action against any person, as defined in Section 101(21)
20 of CERCLA or California Health and Safety Code, § 25319, or other
21 entity, not a signatory to this Decree for any liability it may
22 have arising out of or relating to the Site.
23

24 F. The Parties to this Decree agree that while the United
25 States, EPA and the State may support the applicability of
26 Section XXIX (Contribution Protection) based upon the existence
27 of this Decree, neither the United States, nor EPA nor the State
28 shall be under any obligation to assist the Defendants in any way

1 in defending against suits for contribution brought against the
2 Defendants which allege liability for matters covered by this
3 Covenant Not to Sue by persons or entities that have not entered
4 into this settlement.

5
6 G. The Covenants Not to Sue under Paragraphs A, B and D
7 contained in this Section shall also apply to:

8
9 1. Each Defendant's directors, officers and employees as to
10 their actions in that capacity for that Defendant, and

11
12 2. Each Defendant's successors and assigns except to any
13 liability of such successor or assign which arose independently
14 of the liability of that Defendant.

15
16 XXXI. WAIVER OF CLAIM-SPLITTING DEFENSE

17
18 All Parties recognize and acknowledge that the settlement
19 embodied in this Decree is only a partial resolution of issues
20 related to the remediation of conditions at the Site. Defendants
21 hereby waive the defenses of res judicata, collateral estoppel,
22 and claim-splitting by the Plaintiffs, only with respect to the
23 Plaintiffs' rights to pursue subsequent litigation regarding
24 Defendants' responsibility for phases of Site work and costs not
25 covered by this Decree.

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1 XXXII. COMMUNITY RELATIONS

2
3 The Work Defendants shall cooperate with EPA and the State
4 in providing information to the public. As requested by EPA or
5 the State, the Work Defendants shall participate in the
6 preparation of all appropriate information disseminated to the
7 public and in public meeting(s) which may be held or sponsored by
8 EPA or the State to explain activities at or concerning the Site
9 relative to the Work required under the terms of this Decree. As
10 appropriate, EPA or the State may seek consultation with and
11 assistance from Work Defendants in the preparation of information
12 disseminated to the public and in public meeting(s) which may be
13 held or sponsored by EPA or the State to explain activities at or
14 concerning the Site.

15
16 XXXIII. LODGING AND PUBLIC PARTICIPATION

17
18 Pursuant to Section 122(d) of CERCLA, 42 U.S.C. § 9622(d),
19 this Decree will be lodged with the Court for thirty (30) days,
20 and the United States shall publish a Notice of Availability of
21 review to allow public comment prior to entry by the Court. The
22 United States will file with the Court a copy of any comments
23 received and the responses of the United States to such comments.

24
25 No Party shall be bound by modifications to this Decree
26 without its prior written consent, and consent to this Decree is
27 not consent to such modifications.

28 ///

1 XXXIV. STATE AND LOCAL AGENCY PARTICIPATION

2
3 A. Lead Agency

4
5 EPA is and shall be the lead agency, as defined in the NCP,
6 for the activities within the scope of this Decree.
7

8 B. Interagency Committee

9
10 The Operating Industries Interagency Committee ("IAC")
11 consists of interested state and local agencies. The IAC meets
12 on a regular basis to exchange information on agency regulatory
13 activities at the OII Site and reviews and comments on remedial
14 and response actions undertaken at the Site. The IAC has a
15 Technical Subcommittee ("IAC Technical Subcommittee") which
16 exchanges technical information and which is primarily
17 responsible for reviewing and commenting on the remedial and
18 response actions.
19

20 C. Role of Interagency Committee

21
22 The Work Defendants shall make available copies of
23 significant deliverables in this Decree, such as Plans, Designs
24 and the Operations Manual, to the members of the IAC for review.
25 EPA will provide Work Defendants with a current mailing list for
26 IAC members prior to the effective date of this Decree. After
27 the IAC Technical Subcommittee and any other interested IAC
28 members have had the opportunity to review the deliverables, they

1 shall have the opportunity to meet with EPA and the State to
2 discuss the deliverables and prepare collaborative comments.
3 These collaborative comments shall be submitted to the Work
4 Defendants as EPA comments. The Work Defendants shall respond to
5 the EPA comments as may be required by the terms of Section IX
6 (Work to be Performed) and subject to Work Defendants right under
7 Section XXIV (Dispute Resolution).
8

9 D. EPA will consult with the State before approving any
10 significant deliverables required to be submitted by the Work
11 Defendants under this Decree. EPA will also consult with the
12 State before determining whether a force majeure event beyond the
13 control of the Work Defendants has occurred, and whether the Work
14 Defendants have substantially complied with or completed the
15 terms of this Decree. EPA's failure to consult with the State
16 will not relieve the Work Defendants of any obligation to comply
17 with the requirements of this Decree. If it is not practicable
18 for EPA to consult with the State, EPA shall notify the State of
19 its approval or determination as soon as possible. The State's
20 failure to object in a timely manner to an approval,
21 determination, or other decision of EPA made under this Decree
22 shall constitute concurrence with EPA.
23

24 XXXV. CONSISTENCY WITH THE NCP

25
26 The United States, the State and the Defendants agree that
27 the Work, if performed in accordance with the requirements of
28 this Decree, is consistent with the provisions of the National

Oil and Hazardous Substances Pollution Contingency Plan, 40
C.F.R. Part 300, pursuant to Section 105 of CERCLA 42 U.S.C.
§ 9605.

XXXVI. INDEMNIFICATION

A. The Work Defendants shall indemnify the United States
with respect to EPA, USACE and the U.S. Coast Guard, and the
State and save and hold the United States with respect to EPA,
USACE and the U.S. Coast Guard, and the State, and any of their
divisions, departments, agents and employees harmless for any and
all claims or causes of action arising from any injuries or
damages to persons or property resulting from any negligent,
wanton or willful acts or omissions of the Work Defendants, or
their successors, assigns, contractors, subcontractors, or any
other person acting on their behalf in carrying out any
activities pursuant to the terms of this Decree. This
indemnification does not extend to that portion of any such claim
or cause of action attributable to the negligent, wanton or
willful acts or omissions of the United States with respect to
EPA, USACE, or the U.S. Coast Guard, or the State or their
contractors, subcontractors or any other person acting on their
behalf in carrying out activities at the Site. The United States
and the State shall notify Work Defendants of any such claims or
actions within thirty (30) days of receiving notice that such a
claim or action has been filed. The Work Defendants have the
right to intervention under Section 113(i) of CERCLA, if
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applicable, and to seek intervention under the provisions of
F.R.Civ. P. 24 and California Code of Civil Procedure § 387.

Neither Plaintiffs nor Cash Defendants are parties to any
contract entered into by the Work Defendants at the Site.

B. Work Defendants agree to indemnify and hold Cash
Defendants and their directors, officers and employees harmless
from damages or claims arising as a result of negligent
performance of the Work, or of negligent, willful, or wanton
failure to perform the Work by the Work Defendants or their
contractors or subcontractors. This indemnity and hold harmless
as to Cash Defendants shall not apply to any Cash Defendant which
is not in compliance with the terms of this Decree. Furthermore,
this indemnity and hold harmless shall not include any damages or
claims arising as a result of any negligent, willful or wanton
act or omission of any Cash Defendant or its directors, officers
or employees, nor shall it include any damages or claims which
arise or result from conditions at the Site which are not the
result of the Work performed under this Decree by the Work
Defendants or their contractors or subcontractors. Without
limiting the foregoing, the Work Defendants' obligation as to the
Cash Defendants shall not apply to any claim or cause of action
arising prior to the effective date of this Decree or to the
extent of any liability attributable to any third party,
including EPA, the State or any Cash Defendant. Any Cash
Defendant shall notify Work Defendants of any such claim or
action within thirty (30) days of receiving notice that such a

1 claim or action has been filed. Work Defendants shall have the
2 right to join in the defense of all claims or causes of action
3 within the scope of this indemnification. Further, unless Work
4 Defendants refuse to join in the defense as herein provided, Cash
5 Defendants shall not take or fail to take any action which would
6 prejudice Work Defendants' rights, privileges, defenses, or
7 claims, and shall not settle any claim or cause of action within
8 the scope of this indemnification without the consent of the Work
9 Defendants. Nothing in this Paragraph B shall be construed to
10 affect or pertain to the indemnification of the United States or
11 State, as set forth in Paragraph A of this Section.

12
13 **XXXVII. CLAIMS AGAINST THE FUND**
14

15 Nothing in this Decree shall be deemed to constitute a
16 preauthorization of a CERCLA claim within the meaning of
17 Sections 111 or 112 of CERCLA or 40 C.F.R. § 300.25(d). In
18 consideration of the entry of this Decree, Defendants agree not
19 to make any claims pursuant to Section 112 or Section 106(b)(2),
20 42 U.S.C. §§ 9612, 9606(b)(2), or any other provision of law
21 directly or indirectly against the Hazardous Substance Superfund,
22 or make other claims against the United States or the State for
23 those costs expended in connection with this Decree.

24
25 **XXXVIII. CONTINUING JURISDICTION**
26

27 The Court specifically retains jurisdiction over both the
28 subject matter of and the Parties to this action for the duration

1 of this Decree for the purposes of issuing such further orders or
2 directions as may be necessary or appropriate to construe,
3 implement, modify, enforce or terminate the terms of this Decree
4 or for any further relief as the interest of justice may require.

5
6 **XXXIX. REPRESENTATIVE AUTHORITY**
7

8 Each undersigned representative of the Parties to this
9 Decree certifies that he or she is fully authorized by the Party
10 to enter into and execute the terms and conditions of this
11 Decree, and to legally bind such Party to this Decree.

12
13 **XL. EFFECTIVE DATE**
14

15 This Decree is effective upon the date of its entry by the
16 Court.

17
18 **XLI. TERMINATION AND SATISFACTION**
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20 Upon completion of the Work to be performed pursuant to this
21 Decree, or upon occurrence of an event terminating Work
22 Defendants' obligations, as described in Paragraph C of Section
23 IX (Work to be Performed), Work Defendants shall submit to
24 Plaintiffs a written certification that the Work has been
25 completed in accordance and in full compliance, or that they have
26 otherwise satisfied their obligations in accordance and in full
27 compliance, with this Decree. Within sixty (60) days of receipt
28 of such certification, EPA shall approve or disapprove the

1 certification subject to the provisions of Paragraphs A and D of
2 Section XXXIV (State and Local Agency Participation). The
3 provisions of this Decree, including Work Defendants' obligations
4 for Covered Matters, other than Section XVII (Retention of
5 Records), shall be deemed satisfied upon the Work Defendants'
6 receipt of such written approval from EPA; provided that
7 termination of this Decree shall not alter the provisions of
8 Section XVIII (Reservation of Rights), Section XXIX (Contribution
9 Protection), Section XXX (Covenant Not to Sue) and such other
10 continuing rights and obligations of Work Defendants under this
11 Decree.

12
13 Upon full payment of all its obligations under Section VIII
14 (Payments by Cash Defendants), Section X (Escrow Account) and
15 Attachment A, each Cash Defendant shall have satisfied its
16 obligations for Covered Matters under this Decree, and this
17 Decree shall be terminated as to that Cash Defendant, provided
18 that the termination shall not alter the provisions of
19 Section XVIII (Reservation of Rights), Section XXIX (Contribution
20 Protection), Section XXX (Covenant Not to Sue) and such other
21 continuing rights and obligations of that Cash Defendant under
22 this Decree.

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1 XLII. SECTION HEADINGS

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3 The section headings set forth in this Decree and its Table
4 of Contents are included for convenience of reference only and
5 shall be disregarded in the construction and interpretation of
6 any of the provisions of this Decree.
7

8 XLIII. COUNTERPARTS

9
10 This Decree may be executed and delivered in any number of
11 counterparts, each of which when executed and delivered shall be
12 deemed to be an original, but such counterparts shall together
13 constitute one and the same document.
14

15 SIGNED and ENTERED this 7 day of December, 1988.

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18 *Marianne R. Packer*
19 UNITED STATES DISTRICT JUDGE
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